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May 4, 2023

Dear Judge:

I write to recommend Dan Wetterhahn for a clerkship in your chambers. Dan was a student in my Constitutional Criminal Procedure: Investigations course during the Fall Semester of 2022. For reasons detailed below, I highly recommend Dan.

Dan has a curiosity about and enthusiasm for understanding the law that will serve him well in a clerkship and beyond. I have designed my course to push students to grapple with the questions and tensions in the doctrine and to assess what arguments are available to both the government and defense. Dan is committed to a career as a prosecutor. Though some students who plan to be prosecutors or defenders find it difficult to do so, Dan seemed to relish the challenge of finding the best arguments on both sides. Further, both during class and in office hours, my discussions with Dan made clear his ability to think creatively about the law while remaining grounded in precedent. I was particularly impressed with his ability to take a step back to see the implications of the doctrine for the real world operation of policing and courts in order to better identify places where arguments might otherwise be missed and where open questions remained.

In office hours Dan also exhibited noteworthy characteristics, including diligence and professionalism. Each time he arrived at office hours, he always came prepared with questions he had clearly given thought to in advance, and often with a recent lower court decision on some unresolved area of the doctrine in mind—resulting in some of the most interesting and thought-provoking discussions I’ve ever had with any student. Other students often participated in these discussions and it was evident that Dan has the respect of his peers, not just because of his earnest interest in the law, but because of his willingness to have his deeply held beliefs challenged, to honestly and seriously consider alternative positions, and to respectfully disagree.

Dan’s extracurriculars during his time at UCLA have also helped him develop skills that will be useful throughout his career. In particular, he has been heavily involved in our moot court program and is serving in leadership roles that will help hone his writing, editing, and research skills through the UCLA Criminal Justice Law Review and as a research volunteer through UCLA’s El Centro, Labor and Economic Justice Clinic.


Finally, a note on collegiality. I have no doubt that Dan will be a pleasure to work with. Dan has a lovely and warm sense of humor, genuinely enjoys listening to and learning about others, and a courteous demeanor. Should he be lucky enough to serve as a clerk in your chambers, I believe that you and your staff will enjoy his camaraderie.

May 4, 2023

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In short, I believe Dan would be a welcome addition to your chambers. If I can be of further assistance, please do not hesitate to contact me by phone at (310) 825-6996 or by email at [colgan@law.ucla.edu](mailto:colgan@law.ucla.edu).

Best Regards,



Beth A. Colgan  
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May 3, 2023

Dear Judge:

It is a pleasure to recommend Daniel Wetterhahn for a federal clerkship. I have had the pleasure of teaching Daniel in two courses and I can speak to his exceptional abilities as a student and legal thinker. His transcript speaks for itself: all As with a single B+, and a grade point average of 3.86, near the very top of his class; a Masin Family Academic Silver Award for the second highest grade in his Contracts class; and his success on our Moot Court team, which is consistently ranked the best in the nation.

In my Constitutional Law I course, Daniel was an outstanding student who impressed me with his insight and sharp analytical skills. He demonstrated a high level of discipline and dedication to the course, always coming prepared and offering thoughtful insights into the doctrine and constitutional theory. As someone who desires to be a prosecutor, Daniel brought a different perspective from many other students and he was attentive to the criminal dimensions of many of the cases we read. His final examination was excellent and he earned an A in the class.

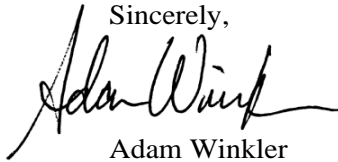
I had an even better and more in depth opportunity to observe Daniel's skills in my Supreme Court Simulation course. The class is a hands-on, experiential class in which we take cases currently pending before the Supreme Court of the United States and we argue and decide them. The students play the role of justices and advocates, depending on the case, and to excel in the class requires precisely those skills needed by a good judicial clerk: students must prepare for oral argument; think through how to resolve complicated and difficult open questions of law; and write persuasive opinions. And because the students are the ones speaking most of the time, it gives me an unusually good chance to examine how they approach legal problems, reason through them, and deliberate with others. On each of those scores, Daniel was exceptional. As a justice, Daniel came well prepared to every argument and showed his desire to take on the most difficult questions posed by the cases. He was not dogmatic in his thinking and was always open to hearing different viewpoints. As an advocate, he was able to clearly and directly answer questions, explain complicated issues, and think on his feet. His opinion in the case he was assigned to write, *Sackett v. EPA*, was the best in the class: straightforward, careful, smart, and easy to follow. Indeed, he consistently produced high-quality work and showed an impressive level of analytical skill and intellectual curiosity.

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I have no doubt that Daniel will make an exceptional federal clerk. His strong work ethic, sharp analytical skills, excellent writing ability, and thoughtful approach to legal reasoning make him an ideal candidate. I highly recommend him. If you have any additional questions or wish to talk through Daniel's candidacy, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Winkler", with a stylized, cursive script.

Adam Winkler

## UCLA School of Law

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June 6, 2023

Dear

I very strongly recommend **Daniel Wetterhahn** for a clerkship in your chambers. Dan is an outstanding student whom I've taught in two courses: Contracts and Labor Law. In both of them, he has demonstrated an incisive mind and deep intellectual curiosity.

In Fall 1L Contracts, Dan earned an "A+" grade based on his exam performance in a large 1L section of about 80 students. He was one of only two students who ranked in the top 10 on all three sections of the exam: a set of subtle, technical short-answer questions, a traditional fact-pattern issue-spotter essay, and an essay requiring students to synthesize disparate doctrinal elements that raise a recurring problem and to assess normatively a particular proposed approach to that problem. Dan was also an active and lively contributor to class discussion. On several occasions I noted his particularly sharp comments as a volunteer, including a conceptually sophisticated point where he used the idea of a hypothetical agreement to explain the existence of a contract in a scenario where there was a promise but no mutual assent. Dan was a regular presence in office hours, eager to discuss the underlying policy issues, regardless of whether there was an instrumental connection to exam preparation or the like.

In Spring 2023, I had Dan again in my course on Labor Law & Collective Action. And again, Dan excelled. In a curved class of 65 students, Dan earned an "A" based on the final exam, which consisted of the same three types of question described above for Contracts. On one of the short-answer questions, I made a note that his answer (unlike any other) was not only perfect according to my rubric but so outstanding that it deserved extra credit. On the traditional issue-spotter essay, his answer was among the top handful in the class and stood out as the only one to receive maximum credit for overall quality of writing and analysis; I noted that his answer was exemplary in clarity, structure, and depth. Dan was quieter in this class, but not for lack of engagement; we again had multiple lively conversations outside of class about the subject matter of the course.

In addition to the incisiveness of his own reasoning, Dan has impressed me with his curiosity, open-mindedness, and good-natured approach to disagreement. He has an eagle eye for the weakness in an argument but also the humility to probe it gently and with the awareness that the error might be his own.

All told, Dan Wetterhahn would be an excellent law clerk and a pleasure to have around. Please do not hesitate to follow up if I can answer any questions or address any concerns you might have.

Sincerely,



Noah Zatz

**DAN WETTERHAHN**

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The attached is an ersatz opinion prepared for a Supreme Court simulation I took in Spring 2023. It is structured to look like a genuine Supreme Court opinion. The opinion is based on the case *Sackett v. EPA* which is currently before the Court. *Sackett* centers on the proper legal test for determining whether the Clean Water Act 33 U.S.C. §§ 1251 *et seq.*, applies to a given wetland. If the Clean Water Act does apply to a given wetland, then the wetland’s owner must acquire a permit from the appropriate federal agency (the Environmental Protection Agency, or the Army Corps of Engineers) before discharging certain pollutants in the property.

The two proposed tests were derived from a 2006 case, *Rapanos v. United States*, 541 U.S. 738—one from the plurality and one from a concurrence. The plurality test (as advanced by the petitioner) would find Clean Water Act jurisdiction if there was a continuous surface water connection between the wetland and a traditionally navigable waterway. The respondent advanced a test derived from the concurrence which instead would find jurisdiction when there existed a “significant nexus” between the wetland and a traditionally navigable waterway. Ultimately, our simulated Supreme Court agreed with the respondent that the significant nexus test was superior.

The piece is substantially my own work, although it has received minor feedback from classmates and instructors in the simulation.

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SACKETT v. ENVIRONMENTAL PROTECTION AGENCY

MICHAEL SACKETT, ET UX., PETITIONERS, v. ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[February 23, 2023]

CHIEF JUSTICE WETTERHAHN delivered the opinion of the Court.

In 1972, Congress enacted the Clean Water Act (“Act”), 33 U.S.C. §§ 1251 *et seq.*, a comprehensive scheme aimed at the “[r]estoration and maintenance of the chemical, physical and biological integrity” of waters of the United States while recognizing and preserving the role of the many States in controlling aquatic pollution. Congress assigned to the Army Corps of Engineers (“Corps”) and the Environmental Protection Agency (“EPA”) the administration and enforcement of the Act not left to the States.

This case concerns the jurisdiction of the EPA to administer a permitting program for certain wetlands per the Act. These wetlands are not themselves traditionally navigable waters—that is those waters that this Court recognizes as at the core of both Federal regulatory power and at the core of the Act. Nonetheless, the health of these wetlands can, and often does, substantially affect the chemical, physical, and biological integrity of core navigable waterways.

The question before us is whether the Ninth Circuit applied the correct test to determine whether the Act covers a given wetland. The Ninth Circuit applied a test derived from a concurring opinion in *Rapanos v. United States*, 511 U.S. 738, 759 (2006) (Kennedy, J., concurring in the judgment), where a wetland is subject to the Act if it is either adjacent to or shares a “significant nexus” with a traditionally navigable water. This nexus requirement is met when a wetland significantly affects the chemical, physical, and biological integrity of that water. Because this test accords with the plain meaning of the Act’s text and congressional intent, harmonizes with our precedent, and is more administrable than the alternative, we affirm.

I

In 1996 the Corps surveyed a less than two-thirds-acre lot 300 feet north of Priest Lake in the Idaho panhandle.<sup>1</sup> Between the lot and Priest Lake is a gravel road and set of residential properties, while to the north of the lot lies the paved Kalispell Bay Road. On the far side of the Kalispell Bay Road (relative to

<sup>1</sup> All statements of fact are drawn from the Joint Appendix and the parties’ merits briefs. No. 21-454 items 21, 22, and 52.

the lot) a ditch drains the lot and the larger Kalispell Bay Fen into a creek that, in turn, empties into Priest Lake. Shallow subsurface flow connects the lot with the Kalispell Bay Fen, with which it had historically connected before the laying of the Kalispell Bay Road. The Corps concluded that the lot contained wetlands covered by the Act.

Eight years later, Michael and Chantell Sackett, unaware of the jurisdictional determination by the Corps, purchased that two-thirds-of-an-acre vacant lot 300 feet north of Priest Lake. In 2007, without seeking a permit as required for Act covered wetlands, the Sacketts dumped over two thousand tons of sand and gravel into the lot to prepare to build a house. In response to a complaint, Corps and EPA employees inspected and conducted a scientific analysis of the lot. This examination determined that the lot had the physical and biological characteristics of a wetland. These characteristics included wetland soil type, flora, and hydrology. Additionally, the EPA found that the wetland on the lot impacted Priest Lake's water quality by retaining runoff sediment, contributing to the lake's base flow, and helping with flood control. On this basis, the EPA first informed the Sacketts that the wetlands were subject to Act jurisdiction and then later issued an administrative compliance order for their unpermitted filling of the lot. This order instructed the Sacketts to remove the sand and gravel and restore the wetland to its natural status.

The Sacketts sued, eventually resulting in a 2021 decision by the Ninth Circuit Court of Appeals announcing that the Act covered the lot. *Sackett v. United States EPA*, 8 F.4th 1075 (9th Cir. 2021). In reaching its decision, the Ninth Circuit applied a test articulated by Justice Kennedy in a concurrence to a four-Justice plurality in *Rapanos*. *Id.* at 1092. This test finds Act jurisdiction over a wetland when it has a significant nexus with a “traditionally navigable water.” *Id.* at 1088. This “significant nexus” inquiry turns on “whether the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” *Id.* When the court applied this test to the wetland lot owned by the Sacketts, it noted the wetland's subsurface connection with the Kalispell Bay Fen and their shared connection with Priest Lake via the drainage ditch and adjoining creek. *Id.* at 1092. On this basis, the court determined that the wetland had a significant nexus with a traditionally navigable water and thus fell under Act jurisdiction. *Id.*

## II

Before the enactment of the Act, Federal regulation of waterways primarily focused on the issue of navigability in keeping with its Article I authority to regulate channels of commerce. *See, e.g., Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824); *The Daniel Ball*, 77 U.S. (10 Wall) 447, 563 (1870); *United States v. Standard Oil Co.*, 384 U.S. 224, 226-28 & n.4 (1966). However, in 1972, Congress—still acting within



its Commerce Clause powers—passed the Act to “establish an all-encompassing program of water pollution regulation.” *City of Milwaukee v. Illinois*, 451 U.S. 317, 304 (1981). The Act’s express goals were to: (1) restore and maintain the “chemical, physical, and biological integrity of the Nation’s waters”; and (2) to recognize, preserve, and protect the “primary responsibilities and rights of States” to manage land and water resources. 33 U.S.C. § 1251(a), (b). As one step toward accomplishing these goals, the Act prohibited the unpermitted discharge of pollutants—including fill material like sand and rock—into “navigable waters.” 33 U.S.C. §§ 1362(6); 1362(12)(A). “[N]avigable waters,” the very core of congressional commerce regulation authority, was broadly defined as “the waters of the United States including the territorial seas.” 33 U.S.C. § 1362(7). The Act further tasked the Corps and the EPA with administering permitting regimes for different pollutants.

Initially, the EPA and the Corps took different approaches to the jurisdictional question of what qualified as “navigable waters.” Notably, the Corps adopted a narrow and restrictive definition. Per the Corps, “navigable waters” were only those waters covered by a pre-existing permitting program authorized by an earlier federal statute concerned exclusively with navigability. However, this approach did not survive judicial review and the Corps adopted a new interpretation of “navigable waters” in line with the definition adopted by the EPA and its “full regulatory mandate.” *NRDC, Inc. v. Callaway*, 392 F. Supp. 685, 686 (D.D.C., 1975). This new approach asserted Act jurisdiction over (among others) waters including wetlands “adjacent” to traditionally navigable waters and their tributaries. 40 Fed. Reg. 31,320, 31,324 (July 25, 1975). “Adjacent” in turn meant “bordering, contiguous, or neighboring” with both naturally occurring and manufactured barriers such as dikes or berms not defeating adjacency. 42 Fed. Reg. 37,122, 37,144 (July 19, 1977).

In 1977, Congress substantially amended the Act, in part to give more responsibilities, such as administering certain pollutant permitting programs, to States and Tribes. 33 U.S.C. §§ 1342(b), 1344(g)(1), 1377(e). However, Congress did not change the definition of “navigable waters” and even explicitly affirmed that the Act covered “adjacent” wetlands. 33 U.S.C. § 1344(f)(1)(A). Congress enacted this revision of the broader Act and affirmation of adjacent wetlands coverage with full knowledge of the Corps’ regulatory definition of “adjacent,” following extensive inquiry.<sup>2</sup>

<sup>2</sup> See, e.g., *Section 404 of the Federal Water Pollution Control Act Amendments of 1972: Hearings Before the Senate Comm. on Public Works*, 94th Cong., 2d Sess. 38-44, 68-69, 239, 325-326 (1976); *Development of New Regulations by the Corps of Engineers, Implementing Section 404: Hearings before the Subcomm. on Water Resources of the House Comm. on Public Works and Transportation*, 94th Cong., 1st Sess. 5-7, 10, 31 (1975).

Moreover, the very subsection of the revised Act that allowed States to issue pollutant permits for some “navigable waters” left to exclusive Federal jurisdiction permitting for other waters “including wetlands adjacent [to navigable waters].”<sup>3</sup> 33 U.S.C. § 1344(g)(1).

After the 1977 revision, the Corps and the EPA adopted parallel regulations defining “adjacent” in the same manner as the Corps had at the time of the congressional inquiries and Act revision. The regulations remained, in the relevant parts, the same from then through the EPA’s positive jurisdictional determination of the Sackett lot. 51 Fed. Reg. 41,206, 41,206 (Nov. 13, 1986); 86 Fed. Reg. 69,372, 69,373 & n.5 (Dec. 7, 2021).

### III

This Court has previously addressed Act jurisdictional questions arising from definitional disputes bordering, contiguous, or neighboring to the Corps’ and the EPA’s regulatory understanding of “adjacent.” However, these cases are not, by themselves, dispositive of the issue at the heart of this case: what test should be used to determine Act jurisdiction over a wetland.

Most recently, in *Rapanos* we considered Act jurisdiction over wetlands adjacent to certain constructed drainage ditches. A four-Justice plurality opinion authored by Justice Scalia concluded that “adjacent wetlands” in the Act meant only those wetlands with a “continuous surface connection” to traditionally navigable waters. *Rapanos*, 547 U.S. at 742. Thus, human-made barriers, such as paved roads interrupt adjacency and remove wetlands from the scope of the Act. *Id.*

Justice Kennedy wrote a lone concurrence applying a different test; the Act covered adjacent wetlands that had a “significant nexus” to traditional waters. *Rapanos*, 547 U.S. at 759 (Kennedy, J., concurring in the judgment). Under this significant nexus test, a wetland “possesses the requisite nexus and thus come within the statutory phrase ‘navigable waters,’ if the wetlands either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” *Id.* at 780.

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<sup>3</sup> “The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into **the navigable waters (other than those waters** which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, **including wetlands adjacent thereto**).” 33 U.S.C. § 1344(g)(1) (emphasis added).

Because of the fractured judgement in *Rapanos*, the case lacks binding precedential authority for our central issue. To put a finer point on it: we must decide whether the plurality or Justice Kennedy’s concurrence provides the right rule for Act jurisdictional determinations over wetlands.

Other cases mark the factual extremes of Act jurisdiction. *United States v. Riverside Bayview Homes Inc.*, 474 U.S. 121 (1985) provides an edge case where there is certainly Federal jurisdiction. On the other hand, *Solid Waste Agency of North Cook County v. United States Army Corps* (“SWANCC”), 531 U.S. 159 (2001), provides an edge case where the Act certainly does not allow Federal jurisdiction. Although the facts and specific holdings of these cases are not dispositive, their frameworks—particularly *Riverside Bayview*’s—can help us resolve this case.

In *Riverside Bayview*, this Court was presented with the question of whether the Corps’ (and by implication the EPA’s parallel) regulation of a wetland directly abutting a traditional navigable water was permissible under the Act. 474 U.S. at 121. There, the Corps had judged a wetland to be adjacent to a navigable water (and thus under Act jurisdiction) where “one could, after wading through a cattail marsh, swim directly from [that particular wetland] to the Great Lakes.” Reply Brief for the United States *United States v. Riverside Bayview Homes, Inc.*, at 2, No. 84-701, 1985 WL 669804 (1985). We unanimously upheld the Corps’ jurisdictional determination. *Riverside Bayview*, 474 U.S. at 139. In our analysis we considered the “language, policies, and history” of the Act. *Id.*

Beginning with the language, we acknowledged the although the word “wetlands” does contain “land,” it would be too simplistic to consider wetlands to be indistinct from “dry lands” (and thus beyond the scope of the Act) based on this linguistic quirk. *Riverside Bayview*, 474 U.S. at 132. “Wetlands” instead fell into the transitional category between land and water, where the Corps (and EPA) would be required to make a jurisdictional judgment call. *Id.* Further, 33 U.S.C. § 1344(g)(1) provided direct support in the text of the statute for the inclusion of wetlands under the Act’s scope of “waters of the United States.” *Id.* at 138.

Turning to the policies and history of the Act, we acknowledged the importance of Federal jurisdiction over adjacent wetlands in “reasonable proximity to other waters of the United States” because of their necessary role as part of the “aquatic system” in maintaining the chemical, physical, and biological integrity of our waters. *Riverside Bayview*, 474 U.S. at 134 (quoting 42 Fed. Reg. at 37,128). We further observed that Congress had the scope of the Corps’ jurisdiction “specifically brought to [its] attention” before amending the Act in 1977. *Id.* at 137. After this, Congress not only refused to diminish the Corps’ jurisdiction over adjacent wetlands, it even expressly incorporated “adjacent wetlands” into the term “navigable waters” in 33 U.S.C. § 1344(g)(1). *Id.* at 137, 138. Accordingly, citing *Chevron, U.S.A., Inc.*

*v. Natural Resource Defense Council, Inc.*, 467 U.S. 837 (1984), we determined that the Corps had used its specialized knowledge to reasonably construe and apply “adjacent wetlands” and deferred to its judgment. *Id.* at 131.

In *SWANCC*, we addressed whether the Corps had properly exercised Act jurisdiction over outlying ponds visited by migratory birds. 531 U.S. at 159. There, we declined to uphold the Corps’ jurisdictional determination because the outlying ponds lacked a “significant nexus” to waters of the United States as traditionally understood, underscoring their geographic remoteness. *Id.* at 167.

#### IV

In this case, we must decide if the Ninth Circuit applied the correct test when it determined that the wetland lot owned by the Sacketts north of Priest Lake was covered by the Act. We conclude that it did.

The core of this case is the choice between the two conflicting understandings of Act coverage for adjacent wetlands expressed in *Rapanos*. The Sacketts urge we adopt the plurality’s “continuous surface connection” test, while the EPA suggests that the significant nexus test from Justice Kennedy’s concurrence is the law.

The correct test is the significant nexus test. The significant nexus test accords with the text, policies, and history of the Act; our precedent; and in its administration avoids pitfalls the continuous surface connection test does not.

#### A

To begin, the significant nexus test directly addresses the primary black letter statutory goal of the Act: restoring and maintaining the “chemical, physical, and biological integrity” of American waters. 33 U.S.C. § 1251(a). The criteria for finding a significant nexus exactly match this goal. That is, a given adjacent wetland is under Act jurisdiction if it significantly affects the “chemical, physical, and biological integrity” of the core waters of congressional concern, *i.e.*, navigable waters. *Rapanos*, 547 U.S. at 759. The direct textual pedigree from the stated goals of the Act ensures that the significant nexus test does not undercut or frustrate the policies the Act was intended to effectuate, which are—at risk of redundancy—safeguarding the chemical, physical, and biological integrity of American waters.

This is in contrast to the continuous surface connection test, whose textual origin is murky and whose application would mire enforcement of the Act in a muck of conflicting State and Tribal rules. To locate the continuous surface connection test in the text of the act requires either ignoring the textual inclusion of “adjacent wetlands” in “navigable waters” found in 33 U.S.C. § 1344(g)(1) or ignoring the dictionary and common, everyday understanding of the word “adjacent.”

The text of the statute identifies “adjacent wetlands” as a subset of “navigable waters” and thus waters of the United States and therefore under Act jurisdiction. 33 U.S.C. § 1344(g)(1). The Sacketts argue as a matter of statutory interpretation that parentheticals in statutes are intended to convey afterthoughts or less important terms. Therefore, because “adjacent wetlands” appears as part of a long parenthetical, Congress could not have intended the phrase to carry the semantic weight placed on it by the EPA. This argument appears to be an attempt to apply so-called “no-elephants-in-mouseholes” canon of statutory interpretation, which articulates that Congress does not “typically use oblique or elliptical language to empower an agency to make a radical or fundamental change to a statutory scheme.” *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022); *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1753 (2020). However, the “no-elephants-in-mouseholes” canon is inapposite here. First, there is no elephant. The Act is a comprehensive statutory scheme explicitly aimed at protecting the integrity of American waters. It is not a radical or fundamental expansion of Federal jurisdiction to extend agency pollution permitting schemes to wetlands which, necessarily under the significant nexus test, significantly impact the integrity of core national waters. Second, there is no mousehole. The text in question, although it does straddle a parenthetical, comes directly from a subsection dealing explicitly with the respective responsibilities of Federal agencies and States. 33 U.S.C. § 1344(g)(1). It would be very strange to suggest, as this argument seems to, that Congress accidentally overexpanded Federal power at the expense of the many States in the same provision where it empowered State pollution permitting regimes. Moreover, this subsection was amended into the Act after Congress had conducted extensive investigation of the Corps’ administration of its pre-1977 permitting program. If Congress had intended to prevent the Corps (or EPA) from exercising jurisdiction over wetlands adjacent to traditionally navigable waters, it could have done so. Instead, it explicitly confirmed that the Corps’ permitting program applied to “adjacent wetlands” as a subset of “navigable waters.” *Id.* Thus, the Act unambiguously confirms EPA jurisdiction over “adjacent wetlands.”

For the continuous surface connection test—which requires wetlands to have a continuous surface water connection to traditionally navigable waterways—to be congruent with the text Act, “adjacent” must narrowly mean contiguous or abutting. However, this is not the case. Neither the dictionary definition nor the everyday plain meaning of “adjacent” are constrained to just contiguous or abutting. *Black’s Law Dictionary* takes “adjacent” to mean “[l]ying near or close to; sometimes, contiguous; neighboring. Adjacent implies that the two objects are not widely separated, **though they may not actually touch.**” *Black’s Law Dictionary* 62 (rev. 4th ed. 1968) (cleaned up emphases changed).<sup>4</sup> The everyday use of “adjacent” is similarly unconstrained. No one would misunderstand, or even find odd, a speaker saying

<sup>4</sup> See also, *The American Heritage Dictionary of the English Language* 16 (1975) (“Close to; next to; lying near; adjoining.”); *Webster’s New International Dictionary of the English Language* 32 (2d ed. 1958) (“Lying near, close, or contiguous; neighboring; bordering on.”) (emphasis omitted).

they grew up in an apartment building adjacent to their best friend's building when the two buildings were on opposite sides of a street or were divided by an alley. Thus, the continuous surface connection test does not accord with either the text of the Act or with the plain meaning of "adjacent."

The Sacketts also argue that federalism concerns should restrain the application of the Act to only those wetlands with a continuous surface water connection to traditionally navigable waterways. These concerns are misplaced. The Act takes great care to respect the traditional spheres of States and Tribes in pollution regulation; it is its second stated goal of the legislation. 33 U.S.C. § 1251(b). Congress achieved this goal by, among other mechanisms, assigning permitting responsibilities of some wetlands to States in the same section of the Act where it assigned to a Federal agency jurisdiction over "adjacent wetlands." 33 U.S.C. § 1344. Nor does the significant nexus test in itself extend congressional power unconstitutionally. In addition to the built in federalism guardrails of the Act (the second statutory goal and the State permitting programs), the significant nexus test restricts Federal jurisdiction to wetlands where there is a significant Federal interest by design. That is, it restricts jurisdiction to wetlands only if they significantly affect the waters over which Congress has unquestioned Article I authority: the very channels of interstate commerce, navigable waters. *See, e.g., United States v. Lopez*, 514 U.S. 549, 558 (1995); *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 282 (1981).

Finally, concern that certain language in the significant nexus test invites overreach is misplaced. The test provides that the wetlands must have a significant effect "either alone or in combination with similarly situated lands in the region." This language, properly understood, simply prevents wetlands that lack any nexus with a traditionally navigable water to be lumped in with wetlands that do possess the requisite nexus. This part of the test merely ensures that the Act is comprehensively administered. Without it, a jurisdictional gap could emerge, with Federal permitting programs excluding small lots with meaningful connections to traditionally navigable waters. These small lots by definition do not in themselves *significantly* affect navigable waters because of their size, but nonetheless are within the proper scope of the Act. In other words, each piece of a wetland must itself have a meaningful effect on a traditionally navigable water, even if that effect is not in magnitude significant until considered as part of a wetlands feature as a whole.

## B

The significant nexus test harmonizes with our existing precedent in both *Riverside Bayview* and *SWANCC*.

Although it is true that both proposed tests would result in the same holding in *Riverside Bayview*, the significant nexus test better matches the methodology we used to get there. We unanimously upheld

the jurisdictional determination there not by engaging in simple surface tracing but instead by examining the “language, policies, and history” of the Act. *Riverside Bayview*, 474 U.S. at 139. This process turned on an understanding that to effectuate the goals of the Act—chiefly restoring and maintaining the chemical, physical, and biological integrity of the nation’s waters—Congress necessarily authorized the regulation of at least some non-dry-land, non-traditionally-navigable-water natural features, such as wetlands, by administering agencies. *Id.* at 134. This was because of the significant impact that those features, including wetlands, have on the integrity of the broader “aquatic system.” *Id.* Thus, our method matched the analysis required by the significant nexus test; we found a neighboring wetland to be under Act jurisdiction precisely because of its import to other waters and its importance in the broader statutory scheme.

*SWANCC* is also best explained by the significant nexus test. Isolated ponds do not significantly impact traditional navigable waters just because they both may be visited by migratory birds. Our analysis explicitly addressed the importance of finding a “significant nexus” between a wetland and a traditionally understood water of the United States. *SWANCC*, 531 U.S. at 167. Because the outlying ponds were geographically remote, they lacked a significant impact on the chemical, physical, and biological integrity of waters traditionally understood to be navigable—the waters of the United States. Although it is true that the continuous surface connection test would reach the same holding, once again, our reasoning maps to the significant nexus test.

## C

Finally, the significant nexus test is better in function than the continuous surface connection test. Determining which wetlands might affect the integrity of the waters of the United States will be a gritty, fact intensive inquiry best handled by agencies with specialized scientific and technical knowledge. Judges are not well positioned to second guess these decisions and should not resort to arbitrary line drawing to do so. *See Chevron*, 467 U.S. at 837. Nor is the complexity or factor-driven character of the test a barrier to its smooth implementation. The EPA and the Corps have successfully operated with regulations consistent with the significant nexus test for 45 years. Moreover, we recently upheld a similarly sophisticated factor test in the context of the Act in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020). We trust both executive agencies and Federal judges to apply the significant nexus test fairly and competently.

To hold otherwise would invite counterintuitive jurisdictional conclusions and potentially undermine the ability of the Act to comprehensively regulate pollution of the nation’s waters. For instance, under the continuous surface connection test, a wetland separated from the Mississippi river by a human erected levee or raised highway would no longer be under Act jurisdiction. This would mean that Federal agencies like the EPA would be helpless to prevent despoilment of such a wetland despite full knowledge

that it and the Mississippi could be extensively connected by subsurface flow, or that its infill would harm the ability of the Mississippi to withstand flood pressures. This would discourage Federal waterway management for fear of cutting off their own jurisdiction. For example, if the Corps sees that a levee is needed for flood control reasons between a continuously-surface-connected wetland and a traditionally navigable water it would face a dilemma. Either it must not build the levee or it must surrender its power to protect the integrity of a core water of the United States through preventing the infill and pollution of the wetland. Or, to take another example, a continuous surface water connection between a wetland and a navigable water could be present all but two weeks out of the year but naturally disappear because of lowered water levels during the height of summer. It is clear under the significant nexus test whether and when the EPA has jurisdiction, but under the continuous surface connection test it is not. The significant nexus test handles cases easily where the continuous surface connection test just gets stuck in the mud.

Nor does the complexity of the test present a potential pitfall to innocent-minded property owners. First, the Corps will provide a jurisdictional determination to a property owner for free. Second, a positive jurisdictional determination only means that a given lot is subject to Federal permitting, not that it is necessarily a no-build site. If a property owner is dissatisfied with either a jurisdictional determination or a permitting decision, they can use the internal appeal mechanisms of the permitting agencies to seek a different outcome.

## V

The Ninth Circuit was right to apply the significant nexus test to the wetland lot in this case. The significant nexus test is the correct statement of the law and the Ninth Circuit correctly applied the test to the facts of this case. The record showed that the wetland lot and the larger Kalispell Bay Fen drained via subsurface flow north of Kalispell Bay Road into a creek emptying into Priest Lake. Thus, the lot had adjacency to a navigable water (Priest Lake) via the creek's tributary. The presence of an artificial barrier such as the Kalispell Bay Road did not defeat adjacency. Further, due to its role in retaining runoff sediment, helping with flood control, and contributing to Priest Lake's base flow; the wetland had a significant effect on the chemical, physical, and biological integrity of a traditionally navigable waterway. The lot therefore was adjacent to and had a significant chemical, physical, and biological effect on traditionally navigable water. This was sufficient to establish the requisite significant nexus. Thus, the EPA had jurisdiction per the Act over the Sackett's wetland lot.

We therefore *affirm* the judgment of the Court of Appeals.

JUSTICE ----- took no part in the consideration or decision of this case.



**Applicant Details**

First Name **Emma**  
Last Name **Wexler**  
Citizenship Status **U. S. Citizen**  
Email Address [wexler2024@lawnet.ucla.edu](mailto:wexler2024@lawnet.ucla.edu)  
Address

Address
Street
<b>71 Hancock st</b>
City
<b>San Francisco</b>
State/Territory
<b>California</b>
Zip
<b>94114</b>
Country
<b>United States</b>

Contact Phone Number **4156806602**

**Applicant Education**

BA/BS From **Brown University**  
Date of BA/BS **December 2018**  
JD/LLB From **University of California at Los Angeles (UCLA) Law School**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=90503&yr=2011](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90503&yr=2011)  
Date of JD/LLB **May 14, 2024**  
Class Rank **Not yet ranked**  
Law Review/Journal **Yes**  
Journal(s) **Journal of Law and Technology**  
Moot Court Experience **No**

**Bar Admission**

### Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

### Specialized Work Experience

#### Recommenders

Malloy, Timothy  
Malloy@law.ucla.edu  
(310) 794-5278  
Horwitz, Jill  
horwitz@law.ucla.edu  
Wetzstein, Sarah  
wetzstein@law.ucla.edu  
310 206-1093

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Emma Ackerman Wexler**

415.680.6602 | wexler2024@lawnet.ucla.edu | 71 Hancock Street, San Francisco, CA 94114

---

June 5, 2023

The Honorable Jamar K. Walker  
U.S. District Court for the Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, Virginia 23510-1915 United States

Re: Judicial Clerkship Application

Dear Judge Walker:

I am a rising third-year law student at UCLA School of Law and I would be honored to clerk in your chambers starting fall of 2024. Last summer, I enjoyed my judicial externship at the U.S. District Court for the Northern District of California and would like to build upon this experience as a judicial clerk. I believe a judicial clerkship will be a meaningful way to begin a career of public service working for the federal government. I am interested in spending time in Norfolk, Virginia because I would like to experience a different part of the country and explore the coast and nature in the surrounding area.

Going into law school, I knew that I wanted to work in policy, lawmaking, or government after graduation. During my summer judicial externship in the U.S. District Court for the Northern District of California, I gained a deeper appreciation for federal law and found it compelling to see the impact the judicial system could have in administering justice. While drafting bench memoranda for the court, I strengthened the legal research and writing skills. Judge Corley's clerks commended my ability to draft a coherent bench memorandum based on the judge's initial impressions of the case, and Judge Corley even told me that my written work product was of the highest quality and ranked in the top percentage of her previous summer externs.

Not only did I succeed at my judicial externship last summer, but I thoroughly enjoyed researching complex topics and analyzing how to best apply the law to a specific case. I have always thrived in a problem-solving setting. Analytical thinking was also my favorite part of my previous job in market research consulting and my Behavioral Decision Sciences major at Brown University. I am excited by the opportunity to be your law clerk because I will be able to learn more about the law through creative and analytical thinking while participating in the interaction between the law and the public.

This year, inspired by my Administrative Law, Public Health Law, and Environmental Aspects of Business Transactions courses, I solidified my interest in working in a federal government agency. I have further practiced and sharpened my writing skills as an Articles Editor on the Journal of Law and Technology. Additionally, I am honing my professional legal skillset this summer at a Summer Associate at Wilson Sonsini Goodrich & Rosati. I believe that clerking will be the perfect opportunity to gain exposure to federal law, experience working for the U.S. Government, and demonstrate my commitment to public service.

In sum, I believe that I possess the necessary skills to successfully assist you as a law clerk. Enclosed please find a copy of my resume, transcript, writing sample, and letters of recommendation from Professor Wetzstein, Professor Malloy, and Professor Horwitz for your review. I appreciate your consideration for this clerkship and look forward to hearing from you soon.

Sincerely,



Emma Wexler

Emma Ackerman Wexler

415.680.6602 | wexler2024@lawnet.ucla.edu  
71 Hancock Street, San Francisco, CA 94114

EDUCATION

UCLA School of Law, Los Angeles, CA  
J.D. Candidate, May 2024

- GPA: 3.59
- Honors: Masin Family Academic Excellence Gold Award in Nonprofit Law and Policy  
Battle for the Gavel Soccer Champion Against USC Law
- Activities: Journal of Law and Technology, Chief Articles Editor  
Health Law Society, Board Member  
El Centro Education Rights Clinic, Volunteer; If/When/How, Member

Brown University, Providence, RI  
B.A. in Behavioral Decision Sciences, December 2018

- Leadership: Behavioral Decision Sciences Department Undergraduate Group, Co-President & Co-Founder  
Brown Women’s Club Soccer, Captain  
ENGN0090 Management of Industrial and Non-profit Organizations, Teaching Assistant
- Capstone: Who at Brown University Feels Qualified to Run for Office? Discovering a Gender Gap
- Study Abroad: Vesalius College, Brussels, Belgium, Fall 2016

EXPERIENCE

Wilson Sonsini Goodrich & Rosati, San Francisco, CA May 2023 – July 2023  
Summer Associate

United States District Court for the Northern District of California, San Francisco, CA May 2022 – July 2022  
Judicial Extern to Judge Jacqueline S. Corley

- Performed legal research and drafted bench memoranda on topics including a motion to vacate, a subpoena request, a motion to dismiss, and an appointment of a legal guardian
- Observed district court trials, pre-trial hearings, and motions and discussed observations with the Judge

Lieberman Research Worldwide, Los Angeles, CA March 2019 – June 2021  
Research Manager, November 2020 – June 2021  
Research Associate, March 2019 – April 2020

- Managed execution of quantitative and qualitative studies by creating project timelines, writing questionnaires, overseeing data collection, analyzing data tables, and creating final report deliverables for clients
- Leveraged advanced analytic tools and research to provide solutions to clients' key business questions
- Managed accounts and financials to ensure clients were satisfied within the scope of projects

Dave Fromer Soccer, Mill Valley, CA October 2020 – January 2021  
Soccer Coach

- Led practices twice a week to teach children basic soccer skills and fitness
- Engaged in teambuilding games to inspire children’s love for physical activity

SKILLS & INTERESTS

Technical Skills: Westlaw, LexisNexis, Python, SPSS, Qualtrics, Salesforce, Advanced Microsoft Excel  
Certificate: IBM Professional Certificate in Data Science  
Interests: Political podcasts | Soccer | Coffee tasting | Teaching math

University of California, Los Angeles  
LAW Student Copy Transcript Report

For Personal Use Only

This is an **unofficial/student copy** of an academic transcript and therefore does not contain the university seal and Registrar's signature. Students who attempt to alter or tamper with this document will be subject to disciplinary action, including possible dismissal, and prosecution permissible by law.

Student Information

Name: WEXLER, EMMA A  
UCLA ID: 105713593  
Date of Birth: 01/27/XXXX  
Version: 08/2014 | SAITONE  
Generation Date: June 02, 2023 | 04:34:58 PM  
This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

Program of Study

Admit Date: 08/23/2021  
SCHOOL OF LAW  
Major:  
LAW

Degrees | Certificates Awarded

None Awarded

Graduate Degree Progress

PR COMPLETED IN LAW 312, 22F

Previous Degrees

None Reported

California Residence Status

Resident

Student Copy / Personal Use Only | [105713593] [WEXLER, EMMA]

**Fall Semester 2021**

Major:  
LAW

CONTRACTS	LAW 100	4.0	14.8	A-	
INTRO LEGL ANALYSIS	LAW 101	1.0	0.0	P	
LAWYERING SKILLS	LAW 108A	2.0	0.0	IP	
Multiple Term - In Progress					
PROPERTY	LAW 130	4.0	13.2	B+	
CIVIL PROCEDURE	LAW 145	4.0	12.0	B	
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		13.0	13.0	40.0	3.333

**Spring Semester 2022**

LGL RSRCH & WRITING	LAW 108B	5.0	18.5	A-	
End of Multiple Term Course					
CRIMINAL LAW	LAW 120	4.0	13.2	B+	
TORTS	LAW 140	4.0	14.8	A-	
CONSTITUT LAW I	LAW 148	4.0	13.2	B+	
LGBT LAW AND POLICY	LAW 165	1.0	0.0	P	
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		18.0	18.0	59.7	3.512

**Fall Semester 2022**

BUSINESS ASSOCIATNS	LAW 230	4.0	13.2	B+	
PROFESSIONAL RESPON	LAW 312	2.0	6.6	B+	
JOURNAL LEADERSHIP	LAW 347	1.0	0.0	P	
NONPROFIT LAW & POL	LAW 363	4.0	17.2	A+	
INTL COMPRTV SPORTS	LAW 432	3.0	12.0	A	
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	14.0	14.0	49.0	3.769

Student Copy / Personal Use Only | [105713593] [WEXLER, EMMA]

## Spring Semester 2023

ADMINISTRATIVE LAW	LAW 216	3.0	9.9	B+
INTRO FED INCOME TX	LAW 220	4.0	16.0	A
PUBLIC HLTH LW & POL	LAW 442	3.0	9.9	B+
HLTH SCHOLAR WRKSHP	LAW 512	1.0	4.0	A
ENVIRON BUS TRANS	LAW 741	4.0	16.0	A
CYBERSECURITY	LAW 962	1.0	3.7	A-

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	16.0	16.0	59.5	3.719

## LAW Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Pass/Unsatisfactory Total	3.0	3.0	N/a	N/a
Graded Total	58.0	58.0	N/a	N/a
Cumulative Total	61.0	61.0	208.2	3.590
Total Completed Units	61.0			

## Memorandum

Masin Family Academic Gold Award  
NONPROFIT LAW & POL, s. 1, 22F

END OF RECORD  
NO ENTRIES BELOW THIS LINE

## UCLA School of Law

TIMOTHY F. MALLOY  
PROFESSOR OF LAW  
FACULTY DIRECTOR, UCLA SUSTAINABLE TECHNOLOGY AND POLICY PROGRAM

SCHOOL OF LAW  
BOX 951476  
LOS ANGELES, CALIFORNIA 90095-1476  
Phone: (310) 794-5278  
Email: Malloy@law.ucla.edu

The Honorable «Full\_Name»  
«Court\_General»  
«Court\_Specific»  
«Street1»  
«Street2»  
«Street3»  
«City», «State» «Zip»

Dear «Salutation» «Last\_Name»:

I am writing with respect to Emma Wexler, who is applying to you for a clerkship position. Ms. Wexler has been in two of my classes at UCLA. In the Fall of 2021 semester, she was in my Contracts class. That class was relatively small for a first year doctrinal course—about forty people. My Environmental Aspects of Business Transactions class, which she took in Spring of 2023, had an enrollment of sixteen second- and third-year law students, providing me an even greater opportunity to get to know her well. Based on my experiences in those classes, I recommend her to you enthusiastically.

Ms. Wexler is a very strong student. She received an A- in Contracts and an A in Environmental Business Transactions. In addition to her capacity for careful, critical thought, she has the ability to keep an eye on the practical implications of her arguments. My Contracts class covers common law, statutory law in the form of the Uniform Commercial Code (UCC), and policy. It is an intense class, with heavy focus on classroom interaction and on-the-ground application of law and policy. Our exploration of the UCC is particularly challenging for many students. Ms. Wexler was an active participant in class, well prepared whether she volunteered or I “cold-called” her. I look for several things in students, including strong understanding of the doctrines, capacity to deal with uncertainty and ambiguity in the law and the facts, and the ability to deal with underlying policy issues. She exhibited remarkable proficiency in each and was undaunted by the complexities of the UCC.

My Environmental Aspects of Business Transactions class uses an extensive, semester long, complex simulation of the sale of a chemical plant to teach transactional strategies and skills. This “experiential” course introduces students to sophisticated lawyering in the transactional context. The course is designed to engage students at the doctrinal, practical, and strategic levels. The class size allowed me to meet individually with each student regularly throughout the semester to discuss written assignments performed as part of the class. I also watch and critique videos of two two-hour negotiation sessions of each student over the course of the semester. Ms. Wexler’s performance in the business transactions course was absolutely terrific. She excelled in a variety of skills, including technical drafting, oral communication, and



The Honorable «Full\_Name»

May 9, 2023

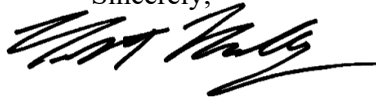
Page 2

strategic analysis. She also collaborated well with a variety of negotiation partners and engaged thoughtfully and enthusiastically in our in-class discussions regarding ethics, negotiation theory, and substantive environmental law and regulation.

From my interactions with Ms. Wexler, she has the intellectual capacity and commitment needed to excel as a law clerk. From my discussions with her outside of class, I believe that her background and experience will enable her to manage challenging workloads and engage with and communicate difficult concepts and analyses. Her writing, which I saw extensively in both courses, is top-notch, whether drafting an objective legal memorandum, a client letter, or an indemnification. Having clerked myself (albeit some years ago) I understand what is required of judicial law clerks, and I am confident that she has the ability and the desire to be a terrific one.

If you have any questions, please do not hesitate to contact me via e-mail at [malloy@law.ucla.edu](mailto:malloy@law.ucla.edu).

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Malloy', with a stylized, flowing script.

Timothy F. Malloy

## UCLA School of Law

JILL R. HORWITZ, PH.D., J.D., M.P.P.  
DAVID SANDERS PROFESSOR OF LAW AND MEDICINE  
FACULTY DIRECTOR, PROGRAM IN PHILANTHROPY AND NONPROFITS

SCHOOL OF LAW  
BOX 951476  
LOS ANGELES, CALIFORNIA 90095-1476  
Phone: (310) 206-1577  
Email: horwitz@law.ucla.edu

May 12, 2023

The Honorable «Full\_Name»  
«Court\_General»  
«Court\_Specific»  
«Street1»  
«Street2»  
«Street3»  
«City», «State» «Zip»

Dear «Salutation» «Last\_Name»:

I am writing to recommend Ms. Emma Wexler for a clerkship in your chambers. In short, Emma is a serious thinker, an extremely hard worker, and a delightful person. I recommend her enthusiastically.

I have had the pleasure of teaching Emma in two courses. First, she was a student in my Nonprofit Law and Policy course last semester, Fall 2022. The course covers a wide range of material, including both substantive state statutory and common law as well as the tax law of exempt organizations. At the start of the course, it was easy to overlook Emma because she was relatively quiet. Occasionally she would raise her hand, but in a class of quite vocal students she would mostly wait to be called on. After the first few weeks, however, Emma stood out. The students must complete a range of assignments during the course, written and oral. Her written work, largely in the form of short essays, put her at the very top of the class. They were not only the most sophisticated papers in terms of argument, but they were beautifully written. In addition, given Emma's contributions I began to call on her to answer particularly difficult questions. Her answers revealed not only that she had understood the material, but that she had thoroughly prepared and thought about the material in context, so much so that she must have performed even further research on the questions we were discussing. I seldom give an A+ in an upper-level course. Hers was well deserved.

Second, Emma was a student in my health law workshop this semester, Spring 2023. The course is unconventional for a law school class. Over the semester, several scholars present unpublished works in progress. The students prepare for those sessions by reading related scholarship, presenting the faculty presenter's work in class the week before the workshop, and leading discussions. They then write referee reports on the presenter's draft. Every piece of her work was extremely insightful and polished. It was her engagement with the faculty speakers, however, that made her stand out. She offered fully professional comments on every single paper,

Emma Wexler, Page 2

including a quantitative paper by an economist writing about a legal issue. She made her comments respectfully and with quiet authority. Each speaker noticed.

A final sign of my high regard for Emma is that I have asked her to serve as a Research Assistant next year on a funded research project. Most of our students researchers work for professors under the supervision of a librarian. In this case, Emma will be working directly for me. She is smart, resourceful, and responsible enough to do the work with little supervision.

Finally, Emma's transcript is just fine, but not at the top of the class. I think she struggled to get her footing in law school, particularly early on. She is also not competitive. Whereas a student of her talents would study only with the highest achieving students, I have seen Emma tutor classmates who struggle. She is kind and generous.

I hope you will give Emma the opportunity to work for you. Please contact me if I can supply any more information to assist her candidacy.

Very truly yours,



Jill R. Horwitz



SARAH R. WETZSTEIN  
LECTURER IN LAW

SCHOOL OF LAW  
BOX 951476  
LOS ANGELES, CALIFORNIA 90095-1476  
Phone: (310) 206-1093  
Email: wetzstein@law.ucla.edu

June 3, 2023

Dear Judge:

I am writing to highly recommend Emma Wexler for a clerkship in your chambers. Emma was a student in my Legal Research and Writing class at the UCLA School of Law during her first year of law school, and I had the pleasure of getting to know her in that context.

At UCLA Law, Legal Research and Writing is a demanding, year-long, five-credit course. When Emma was in my class, my students completed three ungraded writing assignments, five ungraded research assignments, two graded writing assignments (one objective and one persuasive), and one graded research assignment. I also required my students to participate in numerous ungraded exercises. My evaluation of Emma is based on her performance on written assignments, her participation in class discussions and on exercises, and my individual meetings with her.

Emma was a strong Legal Research and Writing student from the start. She arrived at law school with excellent writing skills and, unlike many students, made the transition to legal writing smoothly. Legal analysis seems to come naturally to Emma, who reads carefully and thinks analytically. She is also a skilled and thorough researcher who enjoys the problem-solving aspect of legal research.

As a results of these skills and others, Emma turned in high-quality, polished work all year. Her fall graded writing assignment—an objective memo relating to the potential misappropriation of an alleged trade secret—was a particular highlight as she received the second highest score in her section of 25 students.

Additionally, Emma was a positive member of our classroom community. She set a good example for others by coming to class on time and prepared and by participating appropriately in class discussions and exercises. Emma worked well in groups and seemed to be well-liked by her peers.

She also attended office hours regularly, sometimes to dig more deeply into material we covered in class or to ask questions about an assignment and other times to talk through career related questions. I enjoyed engaging with Emma in this way and was impressed with her thoughtful and deliberate approach to both her work for our class and her career planning.

Emma stayed in touch after our class ended. Among other things, we discussed her summer job interview process and opportunities, her 2L classes, and her career related plans and goals. When Emma began to consider seeking a clerkship, I encouraged her to apply not only because I believe clerking would be a great experience for Emma, but also because I am confident that Emma would be a terrific clerk. The same traits and skills that have served Emma well as a law student will also serve her well as a clerk. She is intelligent, hard-working, steady, and mature.

June 3, 2023

Page 2

If I can provide any additional information about Emma as you consider which candidates to interview and hire, please do not hesitate to ask. As I hope I have made clear, I believe that Emma would be a fantastic choice.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah R. Wetzstein", with a long horizontal flourish extending to the right.

Sarah R. Wetzstein  
Lecturer in Law  
UCLA School of Law

Emma Wexler  
71 Hancock Street  
San Francisco, CA 94114  
wexler2024@lawnet.ucla.edu  
(415) 680-6602

### **Writing Sample**

I drafted the following memorandum as an extern for Judge Jaqueline Corley in the Northern District of California. The memorandum references a case that was transferred from the Western District of Texas to Judge Corley. In the document, I recommend that Judge Corley deny a motion to vacate the transfer order in part.

The memorandum represents substantially my own work with some editing by my law clerk supervisor. Judge Corley gave me permission to use this writing sample.

## MEMORANDUM

**To:** Judge Corley  
**From:** Emma Wexler  
**Date:** May 27, 2023  
**Re:** Motion to Vacate in Part  
**Recommendation:** DENY

---

Defendant seeks to vacate in part an order transferring this case to the Northern District of California. (Dkt. No. 97.) Plaintiff filed a complaint against Defendant in the Western District of Texas (“WDTX”) for patent infringement. (Dkt. No. 1.) The court granted Defendant’s motion to transfer to this District. (Dkt. No. 82.) The Transfer Order included a credibility finding about Defendant’s declarant. (*Id.*) Defendant does not contest the transfer but seeks to vacate the portion of the Transfer Order which included the credibility finding. (Dkt. No. 97.) I recommend you DENY Defendant’s motion to vacate in part.

### BACKGROUND

Plaintiff sued Defendant in the WDTX for patent infringement. (Dkt. No. 1.) Defendant filed a motion to transfer to this District for convenience under 28 U.S.C. § 1404(a). (Dkt. No. 37.) In support of its motion, Defendant filed a declaration by Defendant’s Finance Director which stated that relevant witnesses reside in the Northern District of California; San Diego, CA; and Auckland, New Zealand. (*Id.*; Dkt. No. 82.) Plaintiff opposed the motion and identified other potential witnesses located in Austin, TX, and other locations outside of California or Texas. (Dkt. No. 67.; Dkt. No. 82.) In response, Defendant submitted a second declaration by the Finance Director in which he refuted Plaintiff’s statements about potential Texas witnesses. (Dkt. No. 72; Dkt. No. 82.)

The transfer court found the convenience transfer factors weighed in favor of transfer to the Northern District of California and granted Defendant’s motion. (Dkt. No. 82.) However, the Transfer Order also included a finding that Defendant’s declarant lacked credibility. (*Id.* at 3.)

Because both motions were filed under seal, the transfer court issued its order under seal and allowed the parties one week to submit redactions. (Dkt. No. 97 at 11.) The parties jointly asked for an eight-day extension which the court denied. (*Id.*) Defendant filed its proposed redactions seeking to redact the WDTX Court’s unwarranted and false statements about the declarant and one item of confidential business information. (Dkt. No. 80-1.) At the same time, Defendant filed a motion to seal the Transfer Order to prevent irreparable harm to Defendant and the declarant from the WDTX Court’s false statements. (Dkt. No. 83.) Defendant requested full briefing on the matter and asked to keep the material under seal pending resolution of the motion to seal (and any subsequent appeal). (*Id.*) The transfer court denied Defendant’s motion to seal without a hearing and published the order with the credibility finding and only one piece of business information redacted. (Dkt. No. 82)

Defendant filed a motion to vacate in part the Transfer Order, which is now before this Court. (Dkt No. 97.) Specifically, Defendant seeks to vacate the finding on the declarant’s credibility. (*Id.*) Plaintiff filed an opposition to which Defendant replied. (Dkt. No. 106; Dkt. No. 108.)

### LEGAL STANDARD

A district court in its discretion may revisit prior interlocutory decisions entered by another judge in the same case for cogent reasons or in exceptional circumstances. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532-33 (9th Cir. 2000). Such circumstances occur because “ultimately the judge who enters the final judgment in the case is responsible for the legal sufficiency of the ruling and is the one that will be reversed on appeal if the ruling is found to be erroneous.” *Id.* at 530. A cogent reason or exceptional circumstance can occur where the second judge believes a decision by a judge in an earlier order is legally improper or that error in a previous decision would cause a useless trial. *Castner v. First Nat’l Bank of Anchorage*, 278 F.2d 376, 380 (9th Cir. 1960). Though this framework applies to interlocutory orders after transfer, courts have employed it when considering a challenge to a Transfer Order, but as far as



I am aware none have found exceptional circumstances for doing so. *See Columbia Sportswear N. Am., Inc. v. Seirus Innovative Accessories, Inc.*, No. 20-CV-709 JLS (JLB), 2021 WL 230029, at \*6 (S.D. Cal. Jan. 22, 2021) (collecting cases).

## DISCUSSION

Defendant asks this Court to exercise its discretion and revisit the Transfer Order. However, this Court should not do so. First, Defendant's motion is procedurally improper because: (1) there is no legal support for vacating part of the Transfer Order; and (2) Defendant's objection to the Transfer Order is not something that Defendant could raise on appeal. Second, this case is not an exceptional circumstance in which a court should revisit a prior interlocutory order.

### A. Defendant's Motion is Procedurally Improper

As a threshold matter, Defendant's motion to vacate an order on a motion for which it was the prevailing party because it disagrees with some of the conclusions is procedurally improper. First, the Court cannot vacate just a part of the reasoning on an order. And second, Defendant cannot appeal the Transfer Order.

#### 1. No Legal Basis to Vacate Dicta

Defendant seeks to vacate the part of the Transfer Order which finds the declarant lacks credibility. (Dkt. No. 97.) To do so, Defendant treats the credibility finding as separate from the ultimate holding to transfer. (Dkt. No. 108 at 8.) However, Defendant provides no legal support for its argument that the credibility finding is a separate legal judgment. Instead, Defendant encourages an inference that because the credibility finding played almost no role in the substantive analysis, it is a separate finding. For example, Defendant contends "the credibility finding played almost no role in the substantive transfer analysis and, in fact, contravened the ultimate outcome... the Transfer Order would have come out in [Defendant's] favor with or without the credibility finding." (Dkt. No. 97 at 17-8.)

The credibility finding, however, is not a legal judgment, but rather dicta. Though the credibility finding had minimal influence on the analysis, it was still part of the court's

reasoning. The transfer court used the credibility finding as support for the choice to “credit [the defendant’s] declaration only for its un rebutted statements.” (Dkt. No. 82 at 3.) Thus, though the credibility finding is dicta since the transfer court would have decided to transfer without it, the credibility finding is still a part of the reasoning in the order and not a separate finding. *See Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1173 (9th Cir. 2004) (defining a statement as “dictum” where it is made during the course of delivering a judicial opinion but is unnecessary to the decision in the case and is therefore not precedential.)

Defendant provides no legal support for its argument that the Court can vacate reasoning in a decision but leave the ultimate holding intact. However, though this Court cannot vacate the credibility finding, it is under no obligation to credit the finding as true and should not do so.

## **2. The Credibility Finding Is Non-Appealable**

Defendant cannot appeal the Transfer Order at this time. An order to transfer is an interlocutory order which is not appealable prior to final judgment. *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949 (9th Cir. 1968). Thus, because the credibility finding is part of the Transfer Order, Defendant cannot appeal the order prior to final judgment.

Defendant cannot appeal even after final judgment. A party may not appeal from a judgment in its favor for the purposes of obtaining review of findings which are immaterial to the disposition of the case. *Envtl. Prot. Info. Center, Inc. v. Pac. Lumber Co.*, 257 F.3d 1071, 1075 (9th Cir. 2001). Here, the Transfer Order found in Defendant’s favor, but Defendant still seeks review of the credibility finding. To vacate the credibility finding is more like performing a line edit of the Transfer Order than reviewing a case on the merits. *See Melendres v. Maricopa Cnty.*, No. 16–16659, 2017 WL 4317167 at \*1 (9th Cir. July 27, 2017) (holding the Ninth Circuit will not line-edit a district courts’ opinion.) Thus, Defendant cannot appeal just to remove the credibility finding from the Transfer Order.

Even if Defendant were to find grounds to appeal, the Ninth Circuit would review the overall finding, not the reasoning. If the WDTX came to the proper legal conclusion for erroneous reasons, the Ninth Circuit would affirm the conclusion regardless of that reasoning and

would likely not rule on the erroneous nature of the prior order. *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1213 (9th Cir. 2019). Thus, if Defendant's purpose is only to vacate in part the credibility finding, there would be no reason to appeal.

**B. This Court Should Not Revisit the Transfer Order**

Even if the Court were to overlook these procedural bars to Defendant's motion, there is no basis to exercise your discretion and vacate the credibility finding in the Transfer Order. Although Defendant contends this is an exceptional circumstance in which the Court may revisit a prior interlocutory order, it has not met its burden of demonstrating that such relief is warranted. (Dkt. No. 108 at 9.)

**1. This is not an Exceptional Circumstance**

Exceptional circumstances occur where the Court to which a case was transferred believes either a prior order was legally improper or the prior order had an error that would make the trial useless. *Fairbank* 212 F.3d at 532-33. Here, the convenience factors weighed in favor of transfer and the court correctly ordered transfer. Thus, there was no legal error in the Transfer Order.

Defendant argues that the credibility finding was erroneous and its existence in the Transfer Order will render the trial unfair. A court may find an exceptional circumstance where it is ultimately responsible for the legal sufficiency of the ruling. *Id.* at 530. Though the credibility finding may be erroneous, it is dicta and not a legal judgment. The legal judgment was the decision to transfer, not the reasoning the court to get there. Because the decision to transfer was correct, there is no erroneous legal decision for this Court to revisit. Thus, error in the credibility finding is not reason for this Court to revisit the Transfer Order.

Additionally, an erroneous credibility finding will not cause an unfair trial. Defendant worries that if the credibility finding stands, Plaintiff will use it to discredit the declarant as a witness at trial. (Dkt. No. 97 at 17-18.) However, the Transfer Order is a pretrial order which will not have an impact on the trial. Similarly, because the credibility finding is dicta, it will not be

admitted as evidence at trial. *See Cetacean Cmty.*, 386 F.3d at 1173. The Transfer Order will not in any way render the trial unjust, thus, there is no reason to revisit the Transfer Order.

## **2. Defendant's Proposed Law-of-the-Case Doctrine Does Not Apply**

Instead of the cogent reasons or exceptional circumstances standard, Defendant argues that law-of-the-case principles apply here. "Federal courts routinely apply law-of-the-case principles to transfer decisions of coordinate courts." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (cleaned up). *U.S. v. Alexander* provides a limited set of reasons a court can depart from the law of the case, including (1) the first decision was clearly erroneous; (2) the evidence on remand is substantially different; or (3) a manifest injustice would otherwise result. 106 F.3d 874, 876 (9th Cir. 1997). Defendant asks this Court to exercise its discretion to vacate in part the Transfer Order for three reasons: (1) the credibility finding was clearly erroneous; (2) Defendant claims new evidence contravenes the court's credibility finding; and (3) maintaining the findings is manifestly unjust. (Dkt. No. 97 at 13.)

However, because the issue here is not a legal decision, but rather reasoning and dicta, the law-of-the-case principles do not apply. Even if this Court were to apply the *Alexander* factors, there is no reason to revisit the Transfer Order. "The policies supporting the doctrine apply with even greater force to transfer decisions than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." *Christianson*, 486 U.S. at 816. As discussed above, there is no compelling reason to revisit the Transfer Order. Thus, this case does not meet the high threshold outlined in *Christianson* and this Court should not revisit the Transfer Order.

## **CONCLUSION**

For the reasons stated above, I recommend you DENY the motion to vacate in part.

## Applicant Details

First Name **Ashley**  
 Middle Initial **N**  
 Last Name **Williams**  
 Citizenship Status **U. S. Citizen**  
 Email Address [anw2059@nyu.edu](mailto:anw2059@nyu.edu)

Address

Address
Street
<b>111 Lawrence St. Apt 20F</b>
City
<b>Brooklyn</b>
State/Territory
<b>New York</b>
Zip
<b>11201</b>

Contact Phone Number **4696670068**

## Applicant Education

BA/BS From **University of Texas-Austin**  
 Date of BA/BS **May 2016**  
 JD/LLB From **New York University School of Law**  
<https://www.law.nyu.edu>  
 Date of JD/LLB **May 20, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Review of Law and Social Change**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **NYU Law Marden Moot Court Competition**  
**National BALSA Thurgood Marshall Moot Court Competition**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
 Externships **Yes**

Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Kaufman, Emma  
emma.kaufman@nyu.edu  
212-998-6250

Archer, Deborah  
deborah.archer@nyu.edu  
212-998-6528

Chen, Elizabeth  
elizabeth.chen@brooklaw.edu  
718-780-7518

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers beginning in 2024. I am a third-year student at New York University School of Law attending on a scholarship through the Filomen M. D'Agostino Scholarship for Civil Rights, Civil Liberties, and Justice.

At NYU, I have actively engaged in extracurricular activities that have enhanced my legal skills and contributed to my personal growth. As a member of the Black Allied Law Student Association and Trial Advocacy Society, I have gained valuable experience in advocacy, leadership, and fostering diversity within the legal profession. Further, I revived the NYU Native American Law Student Association (NALSA) chapter after nearly a decade of dormancy and now serve as its Chair, where I advocate for the rights of Native American students and organize impactful events.

I have also demonstrated my commitment to academic excellence and legal research. As a Staff Editor for the Review of Law and Social Change, I honed my writing and analytical skills while ensuring the publication of high-quality legal scholarship. Additionally, as a Research Assistant for Professor Deborah Archer, I conducted extensive research on the history of racial segregation in transportation infrastructure, producing well-written memoranda that contributed to the understanding of complex legal issues. While participating in the Civil Rights Clinic, I collaborated with project teams, conducted legal research, and drafted numerous memoranda. These experiences have strengthened my ability to analyze complex legal issues, provide insightful recommendations, and meet deadlines while maintaining attention to detail and organization.

I believe that my diverse background and personal experiences would significantly contribute to my qualifications for a clerkship in your chambers. As the first person in my family to attend college and as a Citizen of Cherokee Nation and a descendant of Cherokee Freedmen, I have overcome significant challenges and developed a deep appreciation for the law's impact.

I have attached a resume, transcripts, and a writing sample. Please let me know if any other information might be helpful. Arriving separately are three letters of recommendation from Professors Deborah Archer, Emma Kaufman, and Elizabeth Chen.

I would welcome the opportunity to interview with you, and I thank you for your consideration.

Respectfully,

Ashley Nicole Williams

## ASHLEY NICOLE WILLIAMS

111 Lawrence St. Brooklyn, NY 11201 • (469) 667-0068 • anw2059@nyu.edu

### EDUCATION

#### NEW YORK UNIVERSITY SCHOOL OF LAW

Honors: Filomen M. D'Agostino Scholarships in Civil Rights, *Recipient*  
Journal of Law & Social Change, *Staff Editor*  
Activities: Native American Law Student Association, *Chair*  
Black Allied Law Student Association, *Member*  
Trial Advocacy Society Activity, *Member*  
NYU Clerkship Diversity Program, *Participant*  
Professor Deborah N. Archer, *Research Assistant*  
Civil Rights Clinic, *Student*

NEW YORK, NY  
Candidate for J.D., May 2024

#### UNIVERSITY OF CALIFORNIA LOS ANGELES

Master of Social Science  
Research: Inequitable outcomes in online home mortgage lending for Black and Brown borrowers

LOS ANGELES, CA  
June 2018

#### UNIVERSITY OF TEXAS AT AUSTIN

Bachelor of Business Administration: Canfield Business Honors Program, Finance  
Bachelor of Arts: African and African Diaspora Studies  
Activities: Black Business Student Association, *President, Financial Director, Fundraising Chair*  
Delta Xi Chapter of Alpha Kappa Alpha Sorority, Inc., *Membership Intake Chair, Treasurer*  
Study Abroad: University of Cape Town, South Africa, Summer 2014

AUSTIN, TX  
May 2016

### EXPERIENCE

#### ARNOLD & PORTER

##### Summer Associate

- Conduct research and document review to prepare memoranda for projects in White Collar, Complex Litigation, and Appellate practice groups.

Washington, D.C.  
May 2023-July 2023

#### THE HONORABLE LESHANN DEARCY HALL, US DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

##### Judicial Intern

- Conducted research, produced memoranda, and presented findings to the Judge regarding legal matters including *pro se* rights post-trial and an employment law matter at the motion to dismiss stage.

Brooklyn, NY  
May 2022-August 2022

#### JONES DAY

##### SEO Summer Associate

- Completed successful assignments in Global Disputes, Tax, Financial Markets, and Government Affairs including two memoranda.
- Selected to travel to Laredo, Texas to support the Firm's pro bono efforts in assisting asylum seekers at the Texas border.

Washington, D.C.  
June 2021-August 2021

#### CENTER FOR PUBLIC POLICY PRIORITIES

##### Policy Analyst and Advocate, Economic Opportunity Team; Program Lead, Policy Leaders of Tomorrow Fellowship.

- Drafted, secured sponsorship, and advocated for a bill to allow high scores on high school equivalency exams to count for state college readiness standards; signed into law June 2019.
- Co-led the advocacy effort to prevent Texans who default on student debt from losing professional licenses; signed into law June 2019.
- Awarded \$500,000 dedicated grant funds to envision, develop, and execute a policy pipeline program for historically underrepresented students.
- Elected as lead negotiator for the workplace union's inaugural contract: piloted the creation of a 100+ page contract, engaged in 20+ rigorous negotiation sessions with management and their legal counsel, and secured agreement on significant improvements in workplace policy.
- Publications & Appearances: Texas Tribune Festival: *This Way Up: Higher Education Panel*; Texas Tribune Event: *Higher Ed & Social Mobility*; NPR Interview: *Why Texas Historically Black Colleges Receive Less Funding*; Peer-Reviewed Publication - Texas Education Review: *A Review of State Investment in Higher Education During the 86<sup>th</sup> Legislature*.

Austin, TX  
August 2018-May 2021

#### EAST AVENUE PROJECT ON SEGREGATION

##### Research Analyst

- Conducted 50+ in-person surveys of current/previous residents of communities experiencing gentrification in Austin.
- Nominated by program director to present related findings of independent research at UT Austin Peace and Justice Summit to an audience of 75.

Austin, TX  
January 2016-April 2016

### LEADERSHIP EXPERIENCE & AFFILIATIONS

#### SPONSORS FOR EDUCATIONAL OPPORTUNITY

##### SEO Law and SEO Catalyst Participant

- Selected from a competitive applicant pool to engage in a rigorous curriculum focused on developing legal skills and career preparation.

REMOTE  
August 2020 – August 2021

#### TEXAS POSTSECONDARY ADVOCATES COALITION FOR EQUITY (TEXAS PACE)

##### Founder, Lead

- Founded a coalition of equity-focused advocates focused on promoting access to higher education for underrepresented populations.

AUSTIN, TX  
October 2018-May 2021

**INTERESTS:** Instructor and student of hip hop and jazz dance, Portrait photography, Contemporary African American literature



Name: Ashley N Williams  
 Print Date: 06/11/2023  
 Student ID: N18826272  
 Institution ID: 002785  
 Page: 1 of 1

New York University  
 Beginning of School of Law Record

Fall 2021

Instructor: Deborah Archer  
 Civil Rights Clinic Joseph Schottenfeld LAW-LW 10627 3.0 A  
 Instructor: Deborah Archer  
 Supreme Court Simulation Seminar Joseph Schottenfeld LAW-LW 11112 3.0 A-  
 Instructor: Troy A McKenzie  
 Jack L Millman  
 Current AHRS EHRS  
 Cumulative 14.0 14.0  
 Staff Editor - Review of Law & Social Change 2022-2023 57.0 57.0  
 End of School of Law Record

School of Law  
 Juris Doctor  
 Major: Law  
 Lawyering (Year) LAW-LW 10687 2.5 CR  
 Instructor: Elizabeth J Chen  
 Criminal Law LAW-LW 11147 4.0 B  
 Instructor: Rachel E Barkow  
 Torts LAW-LW 11275 4.0 B+  
 Instructor: Christopher Jon Sprigman  
 Procedure LAW-LW 11650 5.0 B-  
 Instructor: Samuel Issacharoff  
 1L Reading Group LAW-LW 12339 0.0 CR  
 Instructor: Samuel Estreicher  
 Zachary Dean Fasman  
 AHRS EHRS  
 Current 15.5 15.5  
 Cumulative 15.5 15.5

Spring 2022

School of Law  
 Juris Doctor  
 Major: Law  
 Constitutional Law LAW-LW 10598 4.0 B  
 Instructor: Melissa E Murray  
 Lawyering (Year) LAW-LW 10687 2.5 CR  
 Instructor: Elizabeth J Chen  
 Legislation and the Regulatory State LAW-LW 10925 4.0 B  
 Instructor: Emma M Kaufman  
 Contracts LAW-LW 11672 4.0 B  
 Instructor: Liam B Murphy  
 AHRS EHRS  
 Current 14.5 14.5  
 Cumulative 30.0 30.0

Fall 2022

School of Law  
 Juris Doctor  
 Major: Law  
 Civil Rights LAW-LW 10265 4.0 CR  
 Instructor: Baher A Azmy  
 Corporations LAW-LW 10644 4.0 B  
 Instructor: Ryan J Bubb  
 Professional Responsibility and the Regulation of Lawyers LAW-LW 11479 2.0 B+  
 Instructor: Geoffrey P Miller  
 Orison S. Marden Moot Court Competition LAW-LW 11554 1.0 CR  
 Teaching Assistant LAW-LW 11608 2.0 CR  
 Instructor: Alba Raquel Morales  
 AHRS EHRS  
 Current 13.0 13.0  
 Cumulative 43.0 43.0

Spring 2023

School of Law  
 Juris Doctor  
 Major: Law  
 Criminal Procedure: Post Conviction LAW-LW 10104 4.0 A  
 Instructor: Emma M Kaufman  
 Civil Rights Clinic Seminar LAW-LW 10559 4.0 A-



EMMA KAUFMAN  
*Assistant Professor of Law*

NYU School of Law  
40 Washington Square South, 334  
New York, NY 10012  
P: 212 998 6250  
emma.kaufman@nyu.edu

Dear Judge:

I'm writing to recommend my student, Ashley Williams, who has applied for a clerkship in your chambers. Ashley is an extraordinary person and a bright student. I'm delighted to endorse her application.

I'll say more below, but here are some highlights. Ashley grew up in Tulsa, Oklahoma. She is the first person in her family to attend college, and she received a master's degree at UCLA before coming to law school. She is a student leader at NYU: an active member of the Black Law Students Association; leader of the school's Native American Law Student Association; and an engaged participant in the classroom. Ashley is also a determined person, who navigated a brain tumor and provides financial support to her family. And she is an outstanding law student, who just earned an A in my very difficult, upper-level constitutional criminal procedure course.

I first met Ashley when she was a student in my 1L course, Legislation and the Regulatory State (LRS). LRS, which is a required first-year course at NYU, can be challenging for many students. It is a crash course in statutory interpretation, structural constitutional law, and administrative law, full of unsettled doctrine and recent Supreme Court cases. Ashley was not intimidated. She spoke often—not too much, but enough to make my job easier and the students around her feel more comfortable exploring new ideas.

Given her performance in LRS, I was thrilled when Ashley enrolled in my constitutional criminal procedure class this spring. My criminal procedure course is atypical. Rather than focusing on policing or criminal adjudication, it surveys post-conviction constitutional criminal law. The material is daunting, and the class has significant overlap with Federal Courts. (For example, we cover sovereign immunity, qualified immunity, the boundary between habeas and Section 1983, and the standards for modification and termination of consent decrees.) My class is hard enough that only serious students enroll; and it's doctrinal enough to teach me a great deal about students' capacity as lawyers and promise as law clerks.

Ashley rose to the occasion. She was a confident and curious participant in the class, which is saying something given how politically sensitive material about incarceration can be. In a room where students often agreed with each other, Ashley questioned assumptions, including her own. She was thoughtful—never dogmatic and always open to new ideas. Really, a model student.

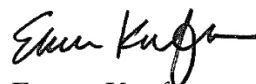
She also crushed the exam. I grade my students anonymously on a strict curve, reserving As for those who have a complete understanding of the doctrine and excellent writing skills.

Ashley's exam was among the very best. She knew the material cold and earned a top grade in a course filled with motivated, upper-level students.

In short, Ashley is a lightning bolt, who has let neither personal adversity nor challenging doctrine deter her. She has the legal skills to be an excellent law clerk and the sort of personality that will make chambers a happier and smoother place to work. I know Ashley would learn a tremendous amount from working for you, and I hope you'll take a serious look at her application.

Please do not hesitate to reach out if I can offer any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Emma Kaufman", with a stylized flourish at the end.

Emma Kaufman  
Assistant Professor of Law  
New York University School of Law



**DEBORAH N. ARCHER**  
Associate Dean, Experiential Education & Clinical Programs  
Professor of Clinical Law

**NYU School of Law**  
245 Sullivan Street, 610  
New York, New York 10012

P: 212 998 6528  
F: 212 995 4031

deborah.archer@nyu.edu

June 20, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

**RE: Ashley Williams**

Dear Judge Walker:

I am Associate Dean for Experiential Education and Clinical Programs and Professor of Clinical Law at NYU School of Law. I am also President of the ACLU. I am writing to strongly recommend Ashley Williams for a judicial clerkship in your chambers. I have had the pleasure of working closely with Ashley in various capacities, including as my research assistant and under my direct supervision in the Civil Rights Clinic. Ashley is intelligent, skilled, and a pleasure to work with. You could not ask for more in a law clerk!

This academic year, Ashley has served as my research assistant, which has given me the opportunity to witness first-hand what a valuable asset she will be to any judge's chambers. She is extremely hard-working, curious, and displays a strong attention to detail. I have come to trust her completely. My responsibilities within the law school and externally often require me to balance numerous urgent responsibilities. Ashley has become adept at organizing and executing the many tasks that I send her way in an efficient and timely manner. Whether writing a detailed research memo on an education, housing, or environmental justice matter, or distilling complex legal issues in preparation for a presentation, no task has been too big or too small for Ashley to tackle. And she consistently brings something new and insightful to the work with her creative and rigorous thinking.

Ashley was also a student in the Civil Rights Clinic, which I teach. The Civil Rights Clinic provides students with the opportunity to work on a wide range of civil rights and social justice matters through direct client representation, appellate advocacy, and the development of advocacy campaigns. Selection is highly competitive, and Ashley was one of only ten students selected for the Clinic from a pool of over one hundred applicants. From the first class, Ashley has been a star. Her work has been creative, and she has demonstrated compassion and profound empathy for her clients and their needs. Ashley's ability to analyze complex legal issues and provide insightful recommendations was instrumental in our work together.

In all of her work, Ashley explored different litigation and policy options, conducting extensive legal research into different potential claims and strategizing with litigation partners and other students to determine the best courses of action. This demands not only diligent attention to detail but also creativity and teamwork. Ashley was enthusiastic about conducting research to determine which advocacy options were the most promising. With little initial information, Ashley and her colleagues in the clinic developed a sophisticated understanding of the economic and political realities on the ground. I was especially impressed by Ashley's diligence in developing mastery of the facts. Months later, when drafting advocacy letters and pleadings, she deftly incorporated relevant details with the legal framework.

Ashley is also a passionate student leader. As a first-year law student, Ashley revived the NYU Native American Law Students Association (NALSA) chapter after the organization was dormant for nearly a decade. As the Chair of NALSA, she has effectively advocated for the rights of Native American students and worked tirelessly to create a supportive environment for underrepresented groups. The organization's first year under Ashley's leadership culminated in a symposium that brought together leading Indigenous legal scholars, activists, and students in partnership with numerous campus organizations and the Center on Race Inequality and the Law. Ashley's involvement in NALSA and other organizations demonstrates her commitment to fostering diversity within the legal profession. Her ability to convene, facilitate meaningful discussions, and inspire others to act is truly commendable.

Beyond her academic and leadership achievements, Ashley's personal background is also noteworthy. As the first person in her family to attend college, she has overcome significant challenges and has proven to be resilient and determined. This background has undoubtedly shaped the unique perspective she would bring to your chambers. Furthermore, as a Citizen of Cherokee Nation and a descendent of Cherokee Freedmen, Ashley's identity at the intersection of Blackness and Indigeneity has allowed her, through lived experience, to gain an appreciation for complex legal issues and a deep appreciation for the impact of the law.

I wholeheartedly recommend Ashley Williams for a clerkship in your chambers. Ashley's achievements, both in and outside of academia, as well as her personal background, attest to her exceptional qualities and potential as a judicial clerk. I am confident she will bring immense value to any chambers she joins. Please do not hesitate to contact me if you require any further

Deborah Archer - [deborah.archer@nyu.edu](mailto:deborah.archer@nyu.edu) - 212-998-6528

information.

Sincerely,

Deborah N. Archer  
Professor of Clinical Law

Deborah Archer - [deborah.archer@nyu.edu](mailto:deborah.archer@nyu.edu) - 212-998-6528



**Brooklyn Law School**  
ESTABLISHED 1901

June 12, 2023

**RE: Ashley Williams, NYU Law '24**

Your Honor:

Ashley Williams is an exceptional law student and will be an outstanding judicial clerk. I write to recommend her for a clerkship in the strongest possible terms. As Ashley's professor in the first-year Lawyering Program at NYU School of Law, I had an opportunity to observe Ashley both in class and in a variety of simulations that expose students to diverse professional and interpersonal skills. As a former law clerk, I know that Ashley possesses both the skills and the demeanor to be an asset to your chambers.

The Lawyering Program, a key part of the first-year JD curriculum at NYU, is a year-long, simulation-based course with approximately 28 students per class. In this course, students operate within small teams, critique each other's work, and receive detailed feedback on a range of skills, including conducting legal research and factual due diligence, drafting objective memoranda and persuasive briefs, interviewing and counseling clients, and oral advocacy.

Ashley's performance as a student in my class was exemplary. Ashley is a highly perceptive, inquisitive, and self-motivated learner who possesses excellent critical thinking and legal reasoning skills.

Ashley's written work is particularly remarkable. Both her predictive memos and her persuasive briefs reflect comprehensive research and an unusual ability to navigate subtle legal distinctions and nuanced details. She is also adept at telling persuasive legal and factual narratives. Ashley entered law school as a top-notch writer, and quickly took to the specifics of legal analysis and writing, incorporating strong reasoning by analogy, using declarative language, and grounding her argumentation in case law. And unlike many law students, Ashley has retained beauty and fluidity in her writing, leading to arguments that are both compelling and enjoyable to read.

Ashley also contributed significantly to classroom discussions and simulations. Ashley regularly surfaced important issues related to power and the law, and helped to create a welcoming environment in which other students felt comfortable sharing their own perspectives. In our client-based simulations, Ashley demonstrated an outstanding ability to build rapport, empower her clients, and provide candid legal advice. For example, in a simulated interview with a client who faced workplace discrimination due to her status as a mother, Ashley was able to learn far more information than other students because of the bond that she formed with the

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[elizabeth.chen@brooklaw.edu](mailto:elizabeth.chen@brooklaw.edu)

Ashley Williams, NYU Law '24

June 12, 2023

Page 2

client and her intuitive ability to make people feel comfortable sharing challenging information. For our capstone project, Ashley thrived in the oral argument context, providing deft answers to questions and making her client's case in a respectful and effective manner.

Finally, Ashley approached the learning process with a level of maturity and humility rare in first year students. A key element of my course involves self-reflection and consideration of supervisor feedback to encourage students both to feel more confident in the work product they submit it, and to understand how to improve it after. Over the course of the year, Ashley became increasingly confident in her work product, and took the time to incorporate feedback and critique to continually improve her work.

On a more personal note, Ashley is a joy to work with and will make an excellent colleague. Ashley has always taken advantage of opportunities to meet with me one-on-one for mentorship and career advice even as I transitioned from NYU to Brooklyn Law, and I have delighted in watching her crystalize her plans to use her law degree to advance American Indian rights. I encouraged her to apply to NYU's Clerkship Diversity program and was thrilled to hear that not only had she been accepted into the program, but also that she had secured an internship in the Eastern District of New York after her first year of law school. Her commitment to becoming the strongest possible advocate and willingness to place herself in new and unfamiliar environments to pursuit of those goals is a delight to see. Ashley is thoughtful, mature, and generous of spirit, and I am confident that she will thrive in the intimate setting of a judge's chambers.

If selected for a judicial clerkship, I know that Ashley will provide excellent service to the Court, take full advantage of the learning opportunities afforded to clerks, and use her position to help elevate others whose backgrounds are, like hers, less commonly reflected in the legal profession. I recommend Ashley for a clerkship in the strongest possible terms. If I can be of any further assistance in your deliberations, please do not hesitate to contact me at 914-649-3928 or [elizabeth.chen@brooklaw.edu](mailto:elizabeth.chen@brooklaw.edu).

Sincerely,

/s/

Elizabeth Chen  
Visiting Assistant Professor of Legal Writing  
Brooklyn Law School

**APRIL 2023 WRITING SAMPLE**

Ashley N. Williams  
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The attached document was prepared for the Supreme Court Simulation Seminar where I was instructed to prepare a bench memorandum summarizing the background, key issues, and principal arguments presented by the parties in a case. This writing sample is my independent work after receiving minimal edits.



**BENCH MEMORANDUM**

To: Dean Troy McKenzie, Professor Jack Millman  
 From: Ashley Williams  
 Date: April 5, 2023  
 Case Name: *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*  
 No.: 22-227  
 Cert. To.: U.S. Court of Appeals for the First Circuit

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**QUESTION PRESENTED:** Whether the Bankruptcy Code unequivocally abrogates tribal sovereign immunity.

**CITATION TO OPINIONS BELOW:** The opinion for the United States Court of Appeals for the First Circuit is reported at 33 F.4th 600. The memorandum of decision and order of the Bankruptcy Court is reported at 622 B.R. 491.

**I. RELEVANT STATUTORY PROVISIONS**

At issue in this case is Section 106(a) of Title 11 of the U.S. Code, which provides for waivers of sovereign immunity.

“Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following: Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.” 11 U.S.C. § 106(a).

Further, Section 101(27) defines a governmental unit.

“The term “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.” 11 USC § 101(27).

**II. BACKGROUND AND PROCEDURAL HISTORY**

This case arises at the intersection of the Bankruptcy Code and long-recognized tribal sovereign immunity. Section 106(a) lists the sections of the Bankruptcy Code where sovereign

immunity is abrogated. 11 U.S.C. § 106(a). Further, Section 101(27) defines the specific governmental units included in that abrogation. 11 USC § 101(27).

Congress defined a “governmental unit” in the original Bankruptcy Code (at the same time that it first enacted the abrogation provision). Pet’r’s Br. at 5 (citing Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §§ 101(21), 106, 92 Stat. 2549, 2552, 2555-2556).

The language of Section 101(27) is critical in this case because this Court’s precedent requires that, in order to abrogate tribal sovereign immunity, Congress must express its intent to do so unequivocally. *Okla. Tax Commn. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991). This court has long held that “Indian tribes are ‘domestic dependent nations’ that exercise inherent sovereign authority over their members and territories. *Id.* Because Indian Tribes<sup>1</sup> are “separate sovereigns pre-existing the Constitution,” they “have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). Suits against Indian tribes are thus barred by sovereign immunity absent a **clear waiver** by the tribe or congressional abrogation.” *Okla. Tax Commn.*, 498 U.S. 505 at 509 (internal citations omitted) (emphasis added).

#### *A. Parties to the Proceeding*

The parties to this case are Petitioners Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al. (hereinafter “the Band”) and Respondent Brian W. Coughlin (hereinafter “Mr. Coughlin”). The Band is a federally recognized tribe that “wholly owns L.D.F. Business Development Corporation; L.D.F. Business Development Corporation wholly owns L.D.F.

<sup>1</sup> I will use the terms “Indian” and “Indian tribe” herein to match the language of the law, but I recognize that the terms “Indigenous” or “Native American” are considered more appropriate terms in other contexts.

Holdings, LLC; and L.D.F. Holdings, LLC wholly owns Niiwin, LLC, d/b/a Lendgreen.” Pet’r’s Br. iii.

The Band’s subsidiary, Lendgreen, provides short-term financing to consumers. *Id.* at 6. It is one of many businesses operated by the Band to “generate revenue essential to funding tribal services and programs.” *Id.* at 6.

*B. Procedural History*

On December 4, 2019, Brian Coughlin filed a Chapter 13 petition and listed among his debts \$1,600 owed to Lendgreen. *In re Coughlin*, 622 B.R. 491, 492 (Bankr. D. Mass. 2020). Mr. Coughlin claimed that after filing his petition, he provided written notice to the Band, who allegedly “continued to send him emails and to make telephone calls to him seeking payment of a so-called payday loan they made to him prepetition.” *Id.* Mr. Coughlin also claimed that he was “so emotionally upset by the continued collection activities that he suffered depression, anxiety, and suicidal ideation, resulting in catastrophic damages.” *Id.* at 492–93. Mr. Coughlin filed a motion to recover for alleged violations of the automatic stay provision of 11 U.S.C. § 362. *Id.* at 492.

The Band “hotly disputed” that it was in violation of the stay. *Id.* Further, the Band filed a motion to dismiss, arguing that the court lacks “subject matter jurisdiction in this dispute because, as a sovereign nation, they are immune from suit” in that court.” *Id.* at 493. Bankruptcy Court Judge Frank J. Bailey granted the Band’s motion to dismiss.

On direct appeal from that decision, the United States Court of Appeals for the First Circuit reversed. *In re Coughlin*, 33 F.4th 600, 604 (1st Cir. 2022). The three-judge panel included Chief Judge Barron, Circuit Judge Lynch, and District Judge Burroughs. *See Id.*

### III. OPINION BELOW

Writing for the two-judge majority, Judge Lynch acknowledges the existing circuit split on the question of whether the Bankruptcy Code abrogates tribal sovereign immunity. The Sixth Circuit held in *In re Greektown Holdings* that Congress *did not* unequivocally abrogate tribal sovereign immunity in the Bankruptcy Code. *In re Greektown Holdings, LLC*, 917 F.3d 451, 460 (6th Cir. 2019). In contrast, the Ninth Circuit held in *Krystal Energy* that Congress spoke unequivocally and did abrogate tribal sovereign immunity with respect to the Bankruptcy Code. *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055, 1061 (9th Cir. 2004). The First Circuit, consistent with the Ninth Circuit, held below that the Bankruptcy Code unequivocally strips tribes of their immunity. *In re Coughlin*, 33 F.4th 600, 603 (1st Cir. 2022).

The First Circuit acknowledges the “enduring principle of Indian law: Although Congress has plenary authority over tribes, courts will not lightly assume that Congress in fact intends to undermine Indian self-government.” *Id.* at 605. It turns first to a textual analysis of Section 106(a) and focuses on “whether Congress intended to abrogate tribal sovereign immunity when it used the phrase ‘governmental unit.’” *Id.* A “governmental unit” is further defined in Section 101(27) of the Code, and the court focuses on the “or other foreign or domestic government” language therein. *Id.*

The panel majority states that there is no real disagreement that a tribe is a government and supports this assertion with dictionary definitions. *Id.* The majority states that “it is also clear that tribes are domestic, rather than foreign because they ‘belong[] or occur[] within the sphere of authority or control or the . . . boundaries of’ the United States.” *Id.* at 606 (citing the Webster’s dictionary) (alterations in original). The court further provides historical support for that

conclusion when it references “one published bankruptcy opinion show[ing] an understanding even before 1978 that tribes could function as and claim the benefits of government.” *Id.*

Specifically, the panel majority relies on *In re Bohm's, Inc.*, a 1979 case which states that an “Indian tribe ought to be considered an instrumentality of the Federal Government for the purpose of determining priorities under the [pre-1978] Bankruptcy Act, and a conduit for government funds and resources.” *In re Bohm's, Inc.*, No. B-77-1142 PHX VM, 1979 Bankr. LEXIS 895, at \*12-13 (Bankr. D. Ariz. Mar. 26, 1979). The panel majority relies on this Arizona Bankruptcy Court case to assert that “Congress was aware of the existing definition of ‘governmental unit’ when it incorporated it into § 106.” 33 F.4th at 606. Further, the panel majority states that Congress was “well aware when it enacted § 101(27) in 1978 and § 106 in 1994 that Indian tribes were legally “domestic dependent nations,” a term coined in 1831, and that domestic dependent nations are necessarily a form of domestic government. *Id.* (citing *Cherokee Nation v. State of Ga.*, 30 U.S. 1, 2 (1831)).

Lastly, the panel majority draws support for its conclusion from the Bankruptcy Code’s structure, drawing support from the fact that the code goes beyond merely stripping immunity to providing benefits, and “in practice, tribes benefit from their status as governmental units,” especially in the collection of taxes. *Id.* at 608.

In his dissent, Chief Judge Barron writes that Congress did not mention tribes whatsoever in Section 101(27). *Id.* at 613. He notes that “Congress did not do so even though it did name many governmental types, including some that, like Indian tribes, enjoy an immunity from suit that Congress may abrogate only clearly and unequivocally.” *Id.* Chief Judge Barron offers the simple conclusion that “Congress did not mention Indian tribes in Section 101(27) because Congress did not intend to include them as “governmental unit[s].” *Id.* at 614 (citing *In re*

*Greektown Holdings, LLC*, 917 F.3d 451, 462 (6th Cir. 2019)) (“Congress’s failure to [explicitly mention Indian tribes], after arguably mentioning every other sovereign by its specific name, likely constitutes ‘[a] circumstance supporting [the] sensible inference’ that Congress meant to exclude them, pursuant to the familiar *expressio unius* canon”).

The Chief Judge addresses and refutes the textual arguments put forth by the majority, stating that “because we are trying to determine whether Congress—through that phrase—abrogated tribal sovereign immunity,” the court “must be convinced that there is no plausible way of reading those words to exclude Indian tribes.” *Id.* at 617. Chief Judge Barron also finds the legislative purpose argument not as clearly and unequivocally on the side of reading Section 101(27) to include Indian tribes, as the majority suggests. However, he admits some limitations of this argument. *Id.* at 623. Further, on the legislative history, he notes that the “legislative history makes no relevant mention of Indian tribes at all.” *Id.* at 624.

#### IV. PETITIONER’S CONTENTIONS

At the center of Petitioner’s argument is that “to abrogate tribal immunity, Congress must ‘unequivocally’ express that purpose.” Pet’r’s Br. 6 (citing *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001)). Per Petitioners, “common-law immunity from suit traditionally enjoyed by sovereign powers” is at the core of tribal sovereign immunity and must therefore be closely observed. *Id.* at 17. Because the bankruptcy code lacks any reference to Indian tribes, it does not provide the “perfect confidence” necessary to infer that Congress intended to abrogate tribal sovereign immunity. *Id.* at 13. The clear-statement rule requires that where there are other probable readings of Congress’s statement, a “court may not imply an abrogation of immunity.” *Id.* Petitioner contends that neither the text nor historical and policy considerations support an abrogation of tribal sovereign immunity here. *Id.*

*A. Text*

Petitioners contend that Congress easily could have, but did not, refer to Indian Tribes in the bankruptcy code and further that the most “straightforward” method Congress could have employed to abrogate tribal sovereign immunity would have been an explicit reference to tribes. *Id.* at 23. Per Petitioner, “numerous examples” exist in other statutes where tribes are mentioned separately alongside entities mentioned in Section 101(27). *Id.* Petitioner provides specific examples on this point, such as the Resource Conservation and Recovery Act” which “permits suits against a ‘person,’ which includes a ‘municipality’ that is then defined to include ‘an Indian tribe or authorized tribal organization or Alaska Native village or organization.’” *Id.* at 25. Petitioner further references similar examples in the Safe Drinking Water Act, the Clean Water Act, and the Federal Debt Collection Procedures Act.

In response to the panel majority’s contention that Congress need not use “magic words,” Petitioner distinguishes requiring magic words and looking to Congress’s practice in other contexts. *Id.* at 27. Therefore, it is “exceedingly odd,” Petitioners contend, to assume Congress chose a “different and more convoluted method of achieving the same result in the Bankruptcy Code.” *Id.* at 28.

Further, Petitioners contend that Reference to “other domestic government” fails to satisfy the clear statement rule. *Id.* at 30. The panel majority relies on dictionary definitions of “domestic” and “government” to infer abrogation. *Id.* Petitioners contend that dictionary definitions alone do not determine whether a statutory term is unambiguous, as separate dictionary definitions may not produce the same meaning as phrases when the words are joined together. *Id.* at 31. Petitioner further draws contrasts between the terms “domestic government” and “domestic dependent

nation,” arguing that it is at least questionable “if not entirely inaccurate” to hold those terms as equivalent. *Id.* at 33.

Petitioners also look to other textual and structural features of Section 101(27) to “undermine the conclusion that other domestic government encompasses Indian tribes.” *Id.* at 34. Petitioners argue the surplusage canon has no role here because “there are more reasonable interpretations of ‘other domestic government.’” *Id.* at 40. Petitioners offer the Washington Metropolitan Area Transit Authority (WMATA) in answer to the contention that no other entity could be captured by the term ‘other domestic government.’” *Id.*

#### *B. History*

Petitioners argue that the unequivocal intention to abrogate tribal sovereign immunity must be found in the statutory text itself and may not be implied. *Id.* at 45. However, if considered, neither historical context nor policy supports abrogating tribal sovereign immunity. *Id.* at 45. Petitioners argue that “the panel majority’s sole authority for that supposed backdrop, however, is a single 1979 bankruptcy court decision ‘published’ in a reporter called Bankruptcy Court Decisions. *Id.* at 43. Petitioners also counter that reliance on floor statements is appropriate in this context. *Id.*

### **V. RESPONDENT’S CONTENTIONS**

Respondent and Petitioners agree that the Band, as a federally recognized tribe, is “generally immune from suit.” Resp’t’s Br. 4 (citing *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788-89 (2014)). However, Respondent notes that tribal sovereignty is “in Congress’s hands” and Congress can “abrogate tribal immunity” by “unequivocally expressing that purpose.” *Id.* (citing *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411,



418 (2001)). Therefore, the Respondent’s argument turns on the contention that Congress **clearly** abrogated tribal sovereign immunity in the Bankruptcy Code.

*A. Text*

Per Respondent, Congress used undisputedly clear language in 11 U.S.C. § 106(a) to abrogate the immunity of a ‘governmental unit.’” *Id.* at 9. Further, whether Congress has authorized suit against an otherwise immune defendant is a matter for the “traditional tools of statutory construction.” *Id.* at 14 (citing *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014)). Respondent argues that the clear statement rule is one tool of many for interpreting whether Congress abrogated tribal sovereign immunity, requiring that “the intent to authorize suit must ‘be clearly discernable from the statutory text.’” *Id.* Section 101(27) defines a governmental unit for the purposes of sovereign immunity abrogation as including “other foreign or domestic government.” *Id.* at 16.

Turning to the dictionary definition, Respondent argues that a tribe is a domestic government. *Id.* Per Respondent, the relevant ordinary meaning of ‘government’ was then, as it is now, ‘the organization, machinery, or agency through which a political unit exercises authority and performs functions.’” *Id.* (citing Webster’s Third New International Dictionary 982 (1976)). Tribes perform those functions, so they are governments, per Respondent’s argument. *Id.* Tribes are also “domestic” under the dictionary definition. *Id.* at 20. Further, the Court has “many times used the word ‘domestic’ specifically to describe tribes. *Id.* Per Respondent, the Court has most often used the phrase “domestic dependent nations,” supporting the idea that the ordinary meaning of domestic includes tribes. *Id.*

Further, Respondent argues that reading the code as a whole confirms that the tribe is a “governmental unit.” *Id.* at 24 (citing *King v. St. Vincent’s Hosp.*, 502 U.S. 215, 221 (1991))

(“[T]he cardinal rule that a statute is to be read as a whole”). Respondents argue that because the filing of a bankruptcy petition operates “as a stay, applicable to all entities,” 11 U.S.C. § 362(a), the stay, injunction, and confirmation provisions apply to the tribe. Resp’t’s Br. 24. Therefore, a reading of tribal sovereign immunity from suit would “single out tribal governments (and tribally backed Internet payday lenders) for immunity from suits that the Code authorizes against the United States, the several States, and equally sovereign governments around the world.” *Id.* at 26. Respondent's point on this issue is an intentionalist one that argues it is implausible to believe Congress intended the outcome the text would require if read facially.

Additionally, Respondent points to other elements of the Bankruptcy Code that use “governmental unit” to refer to entities that carry out governmental functions such as the power to tax, police, and regulate the family, all functions tribes have and use. *Id.* at 27. Notably, the sections referenced in this argument do not include Section 101(27), the specific section dedicated to defining the bounds of sovereign immunity in the Code.

#### *B. History*

While Respondent argues that the case could be decided on the text alone, the Respondent also argues that the scope and history of the Bankruptcy Power show that the Code abrogates tribal sovereign immunity. *Id.* at 30. Respondent primarily relies on *Katz*, the “leading case on the relationship of the Bankruptcy Clause to sovereignty. *Id.* (citing *Central Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 362-63 (2006)). “*Katz* grounded its holding in “[t]he history of the Bankruptcy Clause, the reasons it was inserted in the Constitution, and the legislation both proposed and enacted under its auspices immediately following ratification.” *Id.* Respondent argues that since *Katz*, this Court has held that sovereign immunity has no place in bankruptcy, citing *Allen v. Cooper*, 140 S. Ct. 994, 1002-03 (2020), and further that Congress’s bankruptcy powers are in a

small category, along with eminent domain and war powers, in a small category of authorities that “give rise to structural inferences.” *Id.* (citing *Torres v. Texas Dep’t of Pub. Safety*, 142 S. Ct. 2455, 2467 (2022)).

## VI. DISCUSSION

Indian tribes have “long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (citing *Turner v. U.S.*, 248 U.S. 354, 356 (1919)). It has also long been settled law that abrogation of sovereign immunity cannot be implied, but must be unequivocally expressed. *U.S. v. King*, 395 U.S. 1, 4 (1969). Therefore, without unequivocal congressional abrogation, tribes “are exempt from suit.” 436 U.S. 49 at 58.

The central question here is whether this Court should read as unequivocal a waiver of tribal sovereign immunity by Congress in the Bankruptcy Code, though one is not explicitly written. When interpreting the same language, courts below, in this case and in others, have come to opposing conclusions.

Petitioners have the better argument here, so the Court should hold that tribal immunity has not been abrogated. As Petitioners assert, Congress has, on many occasions, such as the Resource Conservation and Recovery Act, Safe Drinking Water Act, Clean Water Act, and the Federal Debt Collection Procedures Act, specifically referenced tribes when abrogating tribal sovereign immunity. Pet’r’s Br. 5. For example, the Resource Conservation and Recovery Act permits suits against a “person” which includes a municipality defined as:

“The term “municipality” (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, **or an Indian tribe or authorized tribal organization or Alaska Native village or organization**, and (B) includes any rural community or unincorporated town or village or any other

public entity for which an application for assistance is made by a State or political subdivision thereof.” 42 U.S. Code §§ 6903, 6972 (emphasis added).

As outlined in Petitioner’s brief, the Clean Water Act’s citizen-suit provision follows the same structure. *See* 33 U.S.C. §§ 1362(4)-(5), 1365(a)(1) (referring to “person,” which includes a “municipality” defined as an **“Indian tribe or an authorized Indian tribal organization”**) (emphasis added). Additionally, the Federal Debt Collection Procedures Act defines a “[g]arnishee”—a non-debtor “person” who may be the subject of a court-issued writ of garnishment, 28 U.S.C. § 3002(7)—and specifies that “person” includes “a State or local government **or an Indian tribe,**” *id.* § 3002(10) (emphasis added). These statutory provisions provide prime examples of what it means for Congress to abrogate tribal sovereign immunity unequivocally.

No such comparable language can be found in the Bankruptcy Code. Clearly, Congress can and does make its intent to abrogate tribal sovereign immunity clear and does so by writing it plainly. While magic words cannot and should not be required, the standard remains unequivocal expression. *Okla. Tax Commn. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991). Webster’s Dictionary should not be required to determine whether the statute includes tribes. Respondents offer no rationale for why Congress would have been so indirect in the Bankruptcy Code while it has been so plain in other places.

At the core of his argument, the Respondent asks the Court to infer an abrogation of tribal sovereign immunity where Congress does not clearly express its intent to do so. The Respondent advocates an unprecedented decision by this Court. Deciding for the Respondents could not only flood Bankruptcy Courts across the Country with tribal matters not previously faced, but it could also open the door to a deluge of challenges to tribal sovereign immunity in any and all statutes.

Finding for the Respondents would effectively shift the abrogation of tribal sovereign immunity from the exclusive purview of Congress to the whim of courts across the country. The sprawling 574 federally recognized tribes would face a hodgepodge of sovereign immunity, which would require significant time and money to resolve through courts. The disparity in resources amongst tribes, and in comparison to non-tribal entities, strongly counsels against moving toward that outcome. Tribes should not face drastically different limits to their sovereignty based on the whim of Webster and Oxford. The abrogation of tribal sovereign immunity ought to remain with Congress. The unique conditions tribal nations face, given the history of this country, counsel incredible care in this matter.

If Congress did intend to abrogate tribal sovereign immunity in the Bankruptcy code, it could adjust it toward its other clearer abrogation in other statutes, as it made similar adjustments in 1978 and 1994. Leaving this matter in the hands of Congress would avoid watering down the “unequivocal” standard moving forward. And not watering down this standard increases judicial efficiency and is observant of the separation of powers.

## **VII. RECOMMENDATION**

I recommend the Court reverse the judgment of the Court of Appeals for the First Circuit.

## Applicant Details

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## Applicant Education

BA/BS From **Old Dominion University**  
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 JD/LLB From **The University of the District of Columbia**  
**David A. Clarke School of Law**  
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 Date of JD/LLB **May 13, 2023**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **David A. Clarke School of Law, Law Review**  
 Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

## SONYA D. WILLIAMS

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Laurel, Maryland | 3522190587 | sonya.williams@udc.edu

March 28, 2023

Dear Honorable Walker,

As a third-year law student at the David A. Clarke School of Law, I would love an opportunity to work within your chambers for the 2024-2025 term.

Before Law School, I worked in the United States Navy for almost 8 years. While enlisted, I assisted fellow attorneys by drafting correspondence, performing legal research, and preparing case briefs. This is where I gained my passion for law and decided to pursue becoming an attorney.

My two internships transformed me as a student and attorney. In the summer of 2021, I interned at the Department of Veterans Affairs for the Office of General Counsel (Benefits Law Group). I researched questions that the DOJ sent to our office, drafted memorandums of my research, wrote letters to the Secretary of Veteran Affairs and analyzed legal briefs which assisted supervising attorneys in preparing their arguments. In the fall of 2022, I worked within the Maryland Office of the Attorney General, Antitrust division. This was such an exciting internship that pushed me to learn a new area of law quickly and participate in challenging cases as part of a small team.

While at UDC Law, I participated in three legal clinics: The Community Development Legal clinic, the Whistleblower Protection Clinic and the Tax Litigation Clinic. From these clinics, I developed strong research and writing skills. The clinical experience transformed me into a dedicated advocate. I am passionate about enhancing my skills as an attorney and will be a resilient clerk if provided the opportunity.

My husband is an active-duty Navy Submariner Chief. For the last year, we have been patiently waiting to receive orders to the Hampton Roads area, as its where we lived for 8 years before transferring to Washington DC. Now that we have official orders back to Hampton Roads, it is my hope to secure a clerkship with a judge that can further help guide me towards my destiny of becoming a warrior for those in need and grow my knowledge of the law and court system. I can elaborate more if allowed an opportunity to meet, but I wanted to provide some insight into why I am applying later than the traditional timeline for law student candidates.

Attached you will find my resume, transcript, references, and a writing sample. I am extremely motivated and feel very confident that my work ethic, work experience, discipline, writing and research skills make me an excellent candidate for an internship. Thank you for considering my candidacy.

Sincerely,

Sonya Denise Williams



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## SONYA D. WILLIAMS

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### EXPERIENCE

#### **The Veterans Consortium Pro Bono Program**

**April 11, 2023 - Current**

##### **Legal Assistance Program**

###### *Women's Clinic Volunteer*

- Accessed clients files, performed research and provided list of best resources to women Veterans suffering from urgent legal issues.

#### **Tax Litigation Clinic**

**January 3, 2023 - Current**

##### **David A. Clarke School of Law, The University of the District of Columbia**

###### *Certified Student Attorney*

- Represented low-income tax clients before the Internal Revenue Service, Comptroller of Maryland, and District of Columbia Office of Tax and Revenue in collection matters;
- Prepared legal memorandum for supervising attorney regarding federal tax controversy issues for clients in tax disputes with the Internal Revenue Service and State Taxing Authorities.

#### **Maryland Office of the Attorney General (OAG)**

**September 12, 2022 – December 21, 2022**

##### **Antitrust Division**

###### *Law Student Intern*

- Performed legal research and drafted memorandums focused on noncompete agreements and disgorgement under the Maryland Sherman Act.

#### **Whistleblower Protection Legal Clinic**

**May 16, 2022 – August 12, 2022**

##### **David A. Clarke School of Law, The University of the District of Columbia**

###### *Certified Student Attorney*

- Assisted Clients with Whistleblower concerns regarding Government responsibilities, whistleblower protections, and the rights of the whistleblower;
- Accessed client cases in determining whether Whistleblower protections apply; and
- Researched Whistleblower laws and Drafted Client Intake in accordance with findings

#### **Community Development Law Clinic**

**January 3, 2022 – August 12, 2022**

##### **David A. Clarke School of Law, The University of the District of Columbia**

###### *Certified Student Attorney*

- Advised Clients on transactional matters related to starting a non-profit corporation, Cooperatives, financing, entity tax, and affordable housing;
- Drafted and reviewed organizational documents for various types of businesses and social enterprises;
- Assisted clients with corporate governance activities, including structuring board meetings, drafting resolutions, reviewing organizational documents, updating bylaws, and drafting bylaws; and
- Prepared legal memos on client questions in regard to Housing Cooperative shares transfer process under Probate law. Assisted in revision of the Bylaws for two Cooperatives.

#### **Department of Veterans Affairs**

**June 1, 2021-July 27, 2021**

##### **Office of General Counsel – Benefits Law Group**

###### *Legal Intern*

- Reviewed and analyzed opposing counsel's Summary Judgement Briefs, VA Reply Summary Judgment motions, and Reply Briefs for legal sufficiency and factual inconsistencies;
- Researched, outlined and wrote memorandums including, but not limited to Appellate Summary Judgement Briefs, VA Reply Summary Judgment motions, and Appellate Reply Briefs for supervising attorneys during pre-trial litigation;
  - When applicable, wrote alternative considerations when a Claimant's appeal warranted a denial under statute, but the claim deserved special attention due to unique circumstances (Advocated for a change in the law based on the amount of similar yet failed claims).

- Independently drafted three Equitable Relief Benefits recommendation's on behalf of the Secretary of the Department of Veterans Affairs with supervisory approval.

**United States Navy – Enlisted**

**April 2011 – June 2018**

**U.S. Navy Regional Legal Services Office Mid-Atlantic, Norfolk, VA March 2017 – April 2018**

*Legal Intern/Legal Clerk*

- Worked directly under 12 attorneys as their assistants while drafting more than 85 Wills, 45 SGLV forms, and 45 legal correspondences for military-affiliated families;
- Managed over 2,000 client files, organized Attorney cases, and briefed results;
- Received award - Department of Justice Outstanding Law Enforcement Public Service Award, May 2019 (*United States v. PRG Real Estate Management, Inc. et al.*)
  - Assembled and researched Companies that had default judgments issued to Military members that were previous residents of their apartment complexes without proper notice of court and in violation of the Service Members Civil Relief Act. The District attorney of Virginia argued the case and gained a judgment of 1.4 million dollars plus credit repair to each injured plaintiff.

**Fleet Readiness Center Mid-Atlantic, Virginia Beach, Virginia**

**December 2014 – February 2017**

*Legal Clerk*

- FRCMA's Five Site Legal Division Leading Petty Officer and direct liaison to the Commanding Officer,
- Led nine legal clerks in the processing of over 200 legal cases including 60 Non-judicial Punishments and Executive Officer Inquiry's, 30 Disciplinary Review Boards, 67 Civilian Conviction cases, and 16 Administration Boards.

**United States Navy, Norfolk, Virginia**

**September 2011 – June 2015**

*Aviation Ordnanceman Petty Officer Second Class, Enlisted Air Warfare Specialist "AO2 (A.W.)"*

*USS Dwight D. Eisenhower CVN-69*

- Assembled, loaded, unloaded, manned, or certified over 300 bombs, missiles, rockets, guns, targets, sonobuoys, ammunition over two deployments and seven ship workups.

**EDUCATION**

**University of the District of Columbia David A. Clarke School of Law, Washington, DC**

J.D. expected, **May 2023**

*GPA: 3.35*

*Activities:* Law Review, 2022-2023 Symposium Editor  
 Black Law Students Association, Law Review Coordinator  
 2L Day Senator, Student Bar Association  
 Phi Alpha Delta Law Fraternity, Cahn Chapter  
 Military and Veterans Law Society, President  
 Joseph L. Rauh, Jr. Summer Public Interest Fellow, 2021  
 Lead Advocate in establishing Lactation space on UDC Law Campus

*Awards:* Amare and Ava Scholarship Awardee  
 Simi Cares Scholarship Awardee  
 Merit Scholarship

**Old Dominion University, Norfolk, VA**

B.S., Sociology, May 2020

B.S., *Cum laude*, Criminal Justice, May 2020

*Sociology, GPA: 3.38*

*Criminal Justice, GPA: 3.44*

*Honors:* ODU Deans List Spring and Summer 2019, Spring 2020

*Activities:* Extensive list including Student Government and Veterans Association. Full list can be provided upon request.

**American Military University, VA**

A.S., Paralegal Studies, **May 2018**

*GPA: 3.34*

(/StudentSelfService/)

Sonya D Williams

Student Academic Transcript

Academic Transcript

Transcript Level

Law

Transcript Type

Unofficial/Advising Transcript

Student Information

Institution Credit

Transcript Totals

Course(s) in Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

Sonya D Williams

Birth Date

Sep 25, 1987

Curriculum Information

Current Program : Juris Doctor

Program

JD - Law - Full time

College

David A Clarke  
School of Law

Major and  
Department

Law Full-time, DACSL  
Clinical Law

Institution Credit

Term : Fall 2020

**College**

David A Clarke  
School of Law

**Major**

Law Full-time

**Academic Standing**

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	L101A	LW	Torts I	C-	3.000	5.100	
LAW	L102	LW	Civil Procedure I	B-	3.000	8.100	
LAW	L103	LW	Criminal Law	A-	3.000	11.100	
LAW	L104	LW	Contracts I	B	3.000	9.000	
LAW	L105	LW	Lawyering Process I	B+	3.000	9.900	
LAW	LLAB	LW	Lab	S	0.000	0.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	15.000	15.000	15.000	15.000	43.200	2.880
<b>Cumulative</b>	15.000	15.000	15.000	15.000	43.200	2.880

Term : Spring 2021

**College**

David A Clarke  
School of Law

**Major**

Law Full-time

**Academic Standing**

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	L100R	LW	Legal Research	B	1.000	3.000	
LAW	L107	LW	Civil Procedure II	A-	3.000	11.100	
LAW	L108	LW	Criminal Procedure	C+	3.000	6.900	
LAW	L109	LW	Contracts II	A-	3.000	11.100	
LAW	L110	LW	Lawyering Process II	B	2.000	6.000	
LAW	L231A	LW	Torts II/Products Liability	B	3.000	9.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	15.000	15.000	15.000	15.000	47.100	3.140
<b>Cumulative</b>	30.000	30.000	30.000	30.000	90.300	3.010

Term : Fall 2021

**College**

David A Clarke  
School of Law

**Major**

Law Full-time

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	L201	LW	Constitutional Law I	B+	4.000	13.200	
LAW	L202	LW	Evidence	B+	4.000	13.200	
LAW	L203	LW	Professional Responsibility	B-	2.000	5.400	
LAW	L204A	LW	Property I	B	3.000	9.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	13.000	13.000	13.000	13.000	40.800	3.138
<b>Cumulative</b>	43.000	43.000	43.000	43.000	131.100	3.048

Term : Spring 2022

**College**

David A Clarke  
School of Law

**Major**

Law Full-time

**Academic Standing**

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	L205	LW	Constitutional Law II	B-	4.000	10.800	
LAW	L227A	LW	Property II	A-	3.000	11.100	
LAW	L906	LW	Clinic I-Community Development	A+	7.000	30.100	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	14.000	14.000	14.000	14.000	52.000	3.714
<b>Cumulative</b>	57.000	57.000	57.000	57.000	183.100	3.212

Term : Summer 2022

College

David A Clarke  
School of Law

Major

Law Full-time

Academic Standing

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	L450	LW	Moot Court	B+	2.000	6.600	
LAW	L953A	LW	Clinic II Whistleblower Prote	A	7.000	28.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	9.000	9.000	9.000	9.000	34.600	3.844
Cumulative	66.000	66.000	66.000	66.000	217.700	3.298

Term : Fall 2022

College

David A Clarke  
School of Law

Major

Law Full-time

Academic Standing

Good Standing

Last Academic  
Standing

Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	L206	LW	Business Organizations I	B+	3.000	9.900	
LAW	L209	LW	Wills & Estates	A+	3.000	12.900	
LAW	L212	LW	Taxation I	B-	3.000	8.100	
LAW	L500	LW	Independent Study	A+	1.000	4.300	
LAW	L986	LW	Ext'd Clinic-Community	A+	2.000	8.600	
LAW	LCP02	LW	Clinic Portfolio	S	0.000	0.000	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	12.000	12.000	12.000	12.000	43.800	3.650
Cumulative	78.000	78.000	78.000	78.000	261.500	3.352

Transcript Totals

Transcript Totals - (Law)	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution	78.000	78.000	78.000	78.000	261.500	3.352
Total Transfer	0.000	0.000	0.000	0.000	0.000	0.000
Overall	78.000	78.000	78.000	78.000	261.500	3.352

Course(s) in Progress

Term : Spring 2023

College

David A Clarke  
School of Law

Major

Law Full-time

Subject	Course	Level	Title	Credit Hours
LAW	L342	LW	Legal/Bar Success Foundations	3.000
LAW	L400	LW	Law Review (Editorial Board)	1.000
LAW	L400A	LW	Law Review	1.000
LAW	L991A	LW	Elect. Clinic - Tax	7.000

May 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a retired Navy Captain who served 23 years in the Reserve Component of the Judge Advocate General's Corps. I also served 27 years as a civilian Legal Assistance Attorney. It was in this capacity that I first came to know Mrs. Sonya Williams. She transferred to the Region Legal Service Office, Mid Atlantic's Legal Assistance office as a non-legal enlisted sailor. She stated was interested in law and wanted to become a lawyer. Of note is that Mrs. Williams was so impressive at her Command that when she said she wanted to study law they temporarily assigned her to my Command to gain experience in a legal office.

Legal Assistance is a general practice ranging from automobile purchases to wills with the primary mission of resolving legal issues so Servicemembers can focus on national defense. I trained all the new attorneys and had the opportunity to train and work with Mrs. Williams. Her intelligence and focus allowed her to quickly exceed the practical paralegal skills of the office staff. She proved to be an invaluable member of our team demonstrating a strong ability to analyze and organize case facts to support the legal elements of the issues we faced.

We presented a case before the Armed Forces Disciplinary Control Board against an automobile dealership. Mrs. Williams interviewed witnesses, collected statements and researched the available history on the dealership personnel. She learned to analyze automobile transactions and combed through the Buyer's Orders, finance and other documents for evidence of unlawful conduct. She identified patterns of misrepresentation and fraud. The case resulted in termination of several purchase contracts with tens of thousands of dollars refunded to servicemembers, and the Dealership was placed off-limits to servicemembers protecting others from its misconduct. The president of the Board stated it was the most thorough case ever presented.

In another case, I flagged a default judgment by a large multi-state landlord against a servicemember that appeared to violate the Servicemembers Civil Relief Act (SCRA). Ms. Williams went through local court records of default judgments from this landlord and identified over thirty servicemembers. She contacted the individuals and obtained their statements and documents. The landlord was providing false information to the court to take advantage of a loophole in the default judgment provisions of the SCRA. Mrs. Williams efforts provided a pattern of unlawful activity sufficient to submit the case to the Department of Justice for enforcement of the SCRA. The result was the largest settlement ever obtained against a single landlord, 1.49 million dollars much of which was returned to servicemembers.

Our office drafted thousands of wills each year for sailors. During a surge in deployment activity Mrs. Williams offered to help with drafting the documents. She learned how to draft wills and in the process developed a training handbook to help other non-legally trained enlisted staff to draft documents in support of a major deployment of troops.

I have followed her path and was honored to see that she maintained her commitment to service and the law. Her journey from enlisted sailor to attorney is a testament to her intellect, perseverance, and dedication.

I know that she will be a clerk who's career you will want to follow she represents the best in our profession.

Sincerely,

Dwain Alexander, II

Dwain Alexander II - dwain.alexanderII.esq@gmail.com - (757)870-9117





Community Development Legal Clinic  
UDC David A. Clarke School of Law

April 23, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse 600 Granby Street  
Norfolk, VA 23510-1915

**RE: Letter of Recommendation for Sonya Williams**

Dear Judge Walker:


It is with honor and admiration that I write this letter of recommendation for Sonya Williams. This recommendation is based upon my supervision of Sonya in the Community Development Law Clinic. I can sincerely attest to Sonya's work ethic, diligence to improving her legal acumen, and commitment to excellence in legal practice and public service.

In the clinic, Sonya was a zealous advocate and professional in her representation of three clients, which involved diverse public interest transactional matters. A housing-related representation involved Sonya facilitating a board of directors and navigating longstanding conflicts about the renovation of their building. Another matter involved the creation of a nonprofit entity with the goals of supporting low-income residents. Sonya quickly learned the content of nonprofit incorporation, drafted organizational documents, and supported her client's goals. A final client involved conducting analysis on an inheritance-related issue. In this project, Sonya conducted research on two areas of law, bridged the analysis from the two areas, and developed a research memo for our partnering attorneys.

In each of these client representations, Sonya excelled in initiating the representation, engaging with the clients, assessing the details of the situation, conducting written research, drafting the appropriate documents and creating value for our clients. By the end of the clinic, Sonya achieved 446 hours of representation for her clients, which was far beyond the 297.5 hours required for the clinic and in addition to her non-clinic course responsibilities that semester.

I recommend Sonya Williams without reservation based not only upon my experience of her work, diligence, and discernment but also upon her commitment to work in the public interest. Let me know if you have any questions or would like to speak further about this recommendation.

Sincerely,

  
Jerome Hughes  
Assistant Professor of Law  
Director,  
Community Development Law Clinic  
David A. Clarke School of Law  
University of the District of Columbia

*Practice Law. Promote Justice. Change Lives.*

4340 Connecticut Avenue NW | Room 334 | Washington, DC 20008 | 202.274.5122

## MEMORANDUM

TO: Professor Hughes, Supervising Attorney  
FROM: Sonya Williams, Certified Student Advocate  
DATE: June 18, 2022  
RE: Transfer of Inheritance shares

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This memorandum will address the legal process of transferring Cooperative membership shares probate and intestate under the D.C. Code and Industry Standard of Cooperative Bylaws.

## QUESTION PRESENTED

The issue is whether Housing Cooperative shares can be transferred to a beneficiary or heir after the death of a Cooperative member.

## BRIEF ANSWER

Yes. Under the D.C. Code and the current Bylaws of the Cooperative, Limited Equity Cooperative shares can be transferred probate and intestate.

## BACKGROUND

13<sup>th</sup> Street Terrace Cooperative (the “Client” or “Cooperative”), a limited equity cooperative incorporated as a general cooperative association, owns the premises located at (insert address). The Cooperative has 24 units which are occupied primarily by elderly residents. The Cooperative contacted Neighborhood Legal Services Program (NLSP) for assistance with concerns involving the transfer of membership shares after the death of a cooperative member. NLSP contacted the Community Development Law Clinic for assistance in their issue.

In 2020, the Cooperative experienced a member’s death. Due to a lack of will, the Cooperative struggled to locate a possible heir to the shares. Once located, there were significant issues regarding what they should do to transfer the shares. Also in 2020, a member passed away that left the shares to a family member, but the member died with a loan contract and the family member has yet to assume the shares. These issues created extensive carrying charges and monthly fees that whoever assumes the shares would be required to pay, whether they apply for membership or not. But the process of transfer has lasted over 2 years since the death of the members and the charges will continue to increase until the Cooperative understands the processes and their options revolving around member deaths. Over the last three years, many issues have arisen regarding inheritance and subsequent transfer of Cooperative shares.

The primary issues for the Cooperative concern the process of transfer and whether the Cooperative’s actions are aligned with what’s required under the DC’s probate law. The Cooperative’s members need help understanding exactly what occurs when a person passes away intestate and probate under a range of scenarios. The first scenario involves the death of a

Cooperative member who provided the name of the person she intended to leave the Cooperative shares. The second scenario (“Intestate Scenario”) revolves around a Cooperative member who passes intestate and does not provide a name of the person that is to inherit the shares.

The third scenario (“Roommate Scenario”) surrounds a Cooperative member who owns a share in the Cooperative and shares their unit with a roommate, which is a family member who is not an owner of the share. The fourth scenario deals with the naming of a beneficiary but there are unpaid loans attached to the membership share.

## DISCUSSION

### 1. What are the general legal requirements for inheritance?

Inheritance rights are determined in accordance with DC probate laws pursuant to Title 18, 19, and 20 and related case law. Real property and personal property can be passed to another through a will or by intestacy. D.C. Code § 42-301. To open an estate with the Probate Office, a will must be filed within 90 days of the death of the deceased person. D.C. Code § 18-102 generally requires that a will be in writing, signed by the testator and attested to and subscribed in the presence of the testator by at least two credible witnesses. Probate division, PROBATE DIVISION | DISTRICT OF COLUMBIA COURTS, <https://www.dccourts.gov/superior-court/probate-division> (last visited May 3, 2022). If the deceased person had no will, a petition may be filed and indicate intestate to open the estate with the Probate’s office. Large estates, worth \$40,000.00 or more, must be filed in the large estate office at the Probate Office, and small estates, worth \$39,999.99 or less, must be filed as a small estate in the Probate Division. LARGE DECEDENT’S ESTATES (ADM) | DISTRICT OF COLUMBIA COURTS, <https://www.dccourts.gov/services/probate-matters/large-decedents-estates-adm> (last visited Apr 6, 2022). A personal representative, either appointed by will or by the court, will administer the decedent’s estate. *Id.* After the wills and petitions are filed, the cases are normally reviewed by the Office of Wills and Probate within 60 days of its filing.

### 2. Are cooperative shares in 13th Street cooperative inheritable?

Housing Cooperatives are entities that own buildings which have individual units. Those units are associated with shares. Each purchase of a share equates to ownership and voting rights. *Vill. Green Mut. Homes, Inc. v. Randolph*, 361 Md. 179, 760 A.2d 716 (2000). Those shares give the Cooperative member voting capacity on topics associated with the building. When a buyer purchases cooperative shares, they are purchasing an interest in the entity, not the property itself. *Id.*

Housing cooperatives are incorporated as general cooperative associations under DC Code Chapter 9 Section 29. Membership in housing cooperatives involve a combination of rights defined by the membership documents, including the membership share, a proprietary lease, and the organizational documents of the cooperative. *Id.* Membership shares represent the ownership rights in the housing cooperatives as an entity. *Id.* The proprietary lease contains the rights to occupy and use the physical unit. Inheritance of cooperative shares are bound by the Cooperatives bylaws govern regarding the transfer process. *CHFA-Small Props. v. Elazazy*, No. HHDCV126036169S, 2013 Conn. Super. LEXIS 2588 (Super. Ct. Nov. 12, 2013).

Generally, the estate of a decedent, including real and personal property, are inheritable under the DC Code. D.C. Code § 42-301. The Courts consider stocks as part of the decedent's estate. *In re Estate of Burton*, 541 A.2d 599 (D.C. 1988). DC courts have consistently held that housing cooperative shares are a hybrid of real and personal property and that the membership shares are inheritable. *Lemp v. Keto*, 678 A.2d 1010 (D.C. 1996). In *Lemp v Keto*, the Court examined the issues of exoneration and which part of the decedent's estate, specific devisees or the residuary legatee, was responsible for the costs of maintaining specifically devised property before the property had been distributed according to the will. *Id.* As part of their holding, the Court held that exoneration applied to cooperative shares similar to other real property. *Id.* The court reasoned that cooperative shares involved a blend of real property because they were similar to a condo style relationship under real estate and personal property and that the ownership of the shares is linked to the actual building instead of a particular unit like in condos. *Snowden v. Benning Heights Coop., Inc.*, 557 A.2d 151 (D.C. 1989). With that said, the owners of the shares do not own a particular unit in the building, and thus the units themselves are not inheritable.

While Courts have held that Cooperative shares are inheritable, it is also known that membership in a housing cooperative involves a contract, including the bylaws that members are assumed to accept as part of membership. *Willens v. 2720 Wis. Ave. Coop. Ass'n*, 844 A.2d 1126 (D.C. 2004). On a case-by-case basis, Courts will examine the various membership rights as provided by the bylaws and other organizational documents. *Snowden v. Benning Heights Coop., Inc.*, 557 A.2d 151 (D.C. 1989).

**Membership Share Rights.** The bylaws provide specific rights related to the member's shares. Pursuant to section 8 (D) of the bylaws, the cooperative can buy the shares from the decedent members estate or they can sell the shares to another qualified person. *See* Exhibit 1, Cooperative Bylaws. If neither occurs, a decedent's representative can sell the decedent member's share pursuant to Section 8 (D)(1). Under DC Code § 29-925, no membership share or capital in that membership proving ownership shall be issued until the par value of the unit has been paid in full.

**Membership Occupancy Rights.** The bylaws also provide specific rights related to the inheritance of membership and occupancy. The bylaws provide that an heir/beneficiary should submit an application for membership within 60 days of the cooperative members death. *Id.* The Board will approve or reject the application. DC Code § 29-923, permits a cooperative to determine Eligibility for membership. After approval, the heir (applicant) should submit in writing a letter of acceptance within 30 days of the approval and pay all charges associated with the unit including carrying charges.

### 3. What are the relevant legal requirements for the decedent scenarios faced by 13th Street Cooperative?

#### Scenario 1: Named Beneficiary

Here, a deceased member has identified whom they want to inherit their owned shares in the cooperative and lists them in their will. This person is called the beneficiary.

**Membership and Occupancy Rights.** The cooperative bylaws requires a named beneficiary to apply for membership within 60 days pursuant to Bylaws section 8 (D). *Id.* Beyond the 60 days, the cooperative may limit the Named beneficiary from applying for membership to the cooperative. Notably, the 60-day timeline for applying for membership in the cooperative is not aligned with much longer timeline for establishing inheritance.

**Membership Share Rights.** Beyond the 60 days, the cooperative may sell the membership certificate pursuant to section 8 (D). If the cooperative does not sell the shares, the beneficiary can sell the shares back to the Cooperative or sell the shares to a private purchaser.

**Costs.** The beneficiary will incur the carrying charges and monthly rent for the shares. The first two months after the death of the Cooperative member, all costs associated with the membership shares is to be paid by the Beneficiary (regardless of whether they apply for membership, get accepted/denied or sell the shares. After the first two months, the Cooperative has a duty to try to find a new Cooperative member in order to mitigate their losses from the empty unit. *Watergate W., Inc. v. Barclays Bank, S.A.*, 759 A.2d 169 (D.C. 2000). If the shares are sold back to the Cooperative, the Cooperative will be responsible for the charges. *Id.*

#### **Additional Considerations**

The current Bylaws currently pose a conflict regarding applying for membership and the probate process in D.C. The bylaws require that the beneficiary apply for membership within 60 days of the Decedents death. But the Probate Process may conflict with this time frame considering some beneficiary's may not be aware of their inheritance of the property interests until up to 8 months after the death. If this occurs, the Cooperative would lose income if they decide to wait to see if the beneficiary wants to apply for membership, but at the same time, the court may frown upon the Cooperative not providing enough time to allow the beneficiary to apply once learning of the share.

The key point to note is that although the will provides for "ahead of the line" privileges regarding applying for membership, it does not guarantee membership. The 60-day time frame is legally strong because a longer wait may detrimentally impact the Cooperative. The Cooperative would have to decide if they would permit a accommodation of the beneficiary who learns later of his inheritance, or provide an exception in their bylaws for this circumstance to ensure the beneficiary is provided a opportunity to apply after they are made aware of the inheritance.

#### **Scenario 2: Unnamed and Unknown Heir**

Here, a potential heir is unknown by the Cooperative and will be determined in accordance with probate process, which is likely greater than 90 days.

**Membership and Occupancy Rights.** Given that the bylaws only provide 60-day period for applying for membership, the intestate inheritor may not access membership unless permitted by the Cooperative after the 60-day deadline.

**Membership Share Rights.** Pursuant to Chapter 3 of the D.C. Code, an heir is legally entitled to the property of an intestate decedent. According to the timeline associated with probate, it may be

well beyond 90 days before an heir is established. Given there is a 60-day timeline for membership, the cooperative may sell or purchase the membership.

**Costs.** The responsibility for the shares in first two months after the death of the decedent belongs to the possible heir. After the 60-day application timeline for membership has passed, the next month is a pivotal time for the decedent's estate. The Cooperative can choose to sell the shares after the 90-day period has passed if they have not been in communication with possible heirs. After that 90-day period, the Cooperative will incur costs upon itself because the time frame that allows them to wait for the possible Heir has passed.

**Additional Considerations.** If the Cooperative decides to create a stipulation to add to their bylaws that would have the members identify possible future beneficiaries of their shares, it would behoove them to hire a lawyer to evaluate the wording to ensure it does not conflict with the current transfer process. Also, it is important to note that the naming through the bylaws would not replace a valid will. Unless the will has no mention of property interests or does not provide a name for whom should receive the proceeds from the membership shares, the addition in the bylaws of a possible beneficiary could prove useful after a member passes.

### Scenario 3: Roommate

Here, the decedent has a roommate as named on their proprietary lease who is not a member of the cooperative at the time of the member's death.

There is no section in the bylaws that explicitly addresses this issue nor permits the roommate to apply for membership. The roommate can, at the discretion of the Cooperative, apply for membership upon the death of the member in the same process as other potential members, which is outlined in the bylaws in Section 8 (A) & (B).

**Costs.** Until the Cooperative decides whether or not the roommate's application is approved, the Cooperative can 1) allow the roommate to remain in the unit and continue paying the monthly bills until they render a decision on the roommate's application or 2) advise the roommate to relocate since he does not have membership at the Cooperative.

**Additional Considerations.** This process does not guarantee automatic approval by the board of directors, but it does allow the board to keep paying current residents without the burden of searching for a new resident to fill an empty unit. The applicant must follow the Cooperatives bylaws regarding the mandatory time frame that must be followed after the member's death for applying.

If a decedent member passes away with a will, and did not leave the unit to the roommate, a Cooperative would need to determine if they would be willing to offer the same opportunity to the roommate to apply for their own membership if there is availability. In some cases, the Probate Process does not identify whether or not there is a will until a month or later after the death of the decedent. And even still, it can take months for a personal representative to be appointed to distribute the estate. Under the DC Probate Process, it is likely that a roommate who may want to apply may not be aware if they are inheriting the shares. They may not be able to apply for

membership of the current shares due to the delay of processing the will and may miss the sixty-day requirement. If the Cooperative would prefer to keep the roommate as a member and has not confirmed that the roommate is the one inheriting the shares, the Cooperative would benefit from offering the roommate membership individually and allowing them to use the current unit if approved. Once the will is processed, they could allow them to receive their shares for the other space and eliminate the debt owed from applying as a new member. But if they do not inherit the shares but still want to remain a resident, this would ensure they are able to remain a resident of the cooperative and pay according to their contract instead.

#### **Scenario 4 – Bank Loan Contract on Membership Share**

Here, a cooperative member passes away, the new member has been approved by the Cooperative, and the Cooperative Membership share/unit is under a loan contract.

**Costs.** The Heir may directly pay off the remaining balance of the loan, seek additional loans to pay off current loan or requesting to assume the loan with the bank. Assumption of the loan would require a decision by the bank or financial institution. The Cooperative has no control over the loan or the loan documents.

#### **Conclusion**

Housing Cooperatives are Communities within a structured apartment like setting. The issues they face after a Cooperative member passes away can be felt on both a sentimental level and financial level. Despite their comradery, the Cooperative itself is a business and requires income in order to sustain itself. By creating additional language in the bylaws and approaching special situations with compassion, a cooperative may provide a more peaceful transition of residency during the difficult time following a Cooperative members death. But in order to avoid extensive carrying charges associated with the transfer of membership and an empty unit, a Cooperative would benefit from making a decision after 60 days after the death whether to allow a late application, accept a beneficiary after they are notified even if later than bylaws set timeframe or encouraging roommates to apply for membership until the probate process has been solidified.

**Applicant Details**

First Name **Michelle**  
 Last Name **Wolk**  
 Citizenship Status **U. S. Citizen**  
 Email Address [mwolk@umich.edu](mailto:mwolk@umich.edu)  
 Address

**Address**  
**Street**  
**6 Weeping Cherry Lane**  
**City**  
**Commack**  
**State/Territory**  
**New York**  
**Zip**  
**11725**  
**Country**  
**United States**

Contact Phone Number **5165805162**

**Applicant Education**

BA/BS From **George Washington University**  
 Date of BA/BS **January 2021**  
 JD/LLB From **The University of Michigan Law School**  
<http://www.law.umich.edu/currentstudents/careerservices>  
 Date of JD/LLB **May 3, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Michigan Law Review**  
**Michigan Journal of Gender & Law**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Henry M. Campbell Moot Court Competition**

**Bar Admission****Prior Judicial Experience**



Judicial Internships/  
Externships      **No**  
Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

#### **Recommenders**

Fischer, Harriet  
harriet.fischer@cwlc.org  
323-951-9276

Litman, Leah  
lmlitman@umich.edu  
734-647-0549

Kornblatt, Kerry  
kkorn@umich.edu

Deacon, Daniel  
deacond@umich.edu  
734-764-5571

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Michelle Wolk**

6 Weeping Cherry Lane, Commack, NY 11725  
516.580.5162 • MWolk@umich.edu

June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker,

I am a rising third-year student at the University of Michigan Law School, and I am writing to apply for a clerkship in your chambers for your next available term. I am particularly excited about the opportunity to learn from your experience not only as a judge, but also as a public servant, as I am committed to a public interest career.

From starting my own business at age eleven to financing my own undergraduate education, I have always understood the value of hard work. To afford my undergraduate tuition, I worked part-time as an Associate at Springboard Enterprises, an organization dedicated to supporting women entrepreneurs. This job allowed me to pursue my passion for women's rights while working collaboratively with others, and I was proud to exceed some of the organization's goals while I was there. Before I joined the team, Springboard had never achieved its target for the number of articles they wanted to include in a blog column. Under my tenure, their target was not just reached, but doubled.

Because I was financing my own higher education, I worked hard and took extra credits to graduate a semester early. Springboard then hired me into a full-time position as Women's Health Program Manager, a position I held until I started law school.

I came to law school to continue this work, and I have. My work experiences and activities have allowed me to center civil rights and access to justice and develop my legal skills. I earned honors in my legal research and writing class, received the award for best preliminary respondent brief in the Campbell Moot Court competition, and was selected to serve as an Articles Editor for the *Michigan Law Review*. Given the opportunity, it would be my honor to bring my skills, my hard work, and my passion to your chambers.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendation from the following individuals are also attached:

- Professor Leah Litman: lmlitman@umich.edu, (734) 647-0549
- Professor Daniel Deacon: deacond@umich.edu, (734) 764-5571
- Professor Kerry Kornblatt: kkorn@umich.edu, (734) 647-8595
- Harriet Fischer: harriet.fischer@cwlc.org, (323) 951-9276

Thank you for your time and consideration. I look forward to hearing from you.

Warmest Regards,

Michelle Wolk

## Michelle Wolk

6 Weeping Cherry Lane, Commack, NY 11725  
516.580.5162 • MWolk@umich.edu

### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

*Juris Doctor*, GPA: 3.938 (historically top 3%)

Ann Arbor, MI

Expected May 2024

Journals: *Michigan Law Review* (Articles Editor)

*Michigan Journal of Gender and Law* (Student Scholarship Editor)

Moot Court: Campbell Moot Court (Quarter-Finalist & Best Preliminary Respondent Brief)

Honors: Dean's Scholarship Recipient

Certificate of Merit for Contracts (highest grade in course)

Research: Research Assistant for Professor Litman (researching abortion and statutory interpretation)

Activities: Women's Law Students Association (Programming Chair)

Peer Tutor

Women Also Know Law

Pro Bono: Civil Rights Litigation Clearinghouse (Project Manager)

#### GEORGE WASHINGTON UNIVERSITY, COLUMBIAN COLLEGE OF ARTS AND SCIENCES

Washington, DC

*Bachelor of Arts* in Political Science and Minor in Law & Society, *summa cum laude*

January 2021

Honors: Presidential Academic Scholarship Recipient & John A. Morgan Prize Recipient

Activities: No Lost Generation; University Honors Program; Phi Alpha Delta

Publication: "Title VII's Minimum Threshold Has a Maximum Impact . . ." *Columbia Undergraduate Law Review*

### EXPERIENCE

#### CENTER FOR REPRODUCTIVE RIGHTS

Washington, DC

*United States Federal Policy Law Intern*

June 2023 – August 2023

#### WOMEN LAWYERS ON GUARD

Virtual

*Intern*

September 2022 – Present

- Write comments on agency regulations, including Section 1557 of the ACA and abortion care for veterans
- Identify cases in which Women Lawyers On Guard should join or lead an amicus brief

#### PLANNED PARENTHOOD FEDERATION OF AMERICA

Virtual

*Litigation and Law Extern, Policy Team*

January 2023 – April 2023

- Drafted memos about constitutional and statutory issues regarding crisis pregnancy centers
- Analyzed state codes and newly introduced bills to identify model language and assessed new feasible claims and avenues for protecting access to reproductive healthcare
- Participated in weekly team strategy meetings to discuss and explore possible litigation opportunities

#### CALIFORNIA WOMEN'S LAW CENTER (CWLC)

El Segundo, CA

*Legal Intern*

May 2022 – July 2022

- Drafted white paper on telehealth procedures, depublishation request for California Court of Appeal opinion, and support letters to the California legislature on bills that would expand abortion access
- Developed training materials about Title IX and gender equity in sports for qualified legal service providers
- Conducted data analysis about crisis pregnancy centers
- Evaluated schools for Title IX compliance with respect to the rights of pregnant and parenting students

#### SPRINGBOARD ENTERPRISES

Washington, DC

*Women's Health Program Manager*

January 2021 – July 2021

- Lobbied Congress on women's health issues by creating a legislative agenda, reaching out to constituents, meeting with congressional staffers, organizing a congressional briefing, and leading a coalition

*Associate*

September 2019 – December 2020

- Moderated a blog column by requesting and copyediting posts, publishing articles, and promoting content

### ADDITIONAL

**Volunteer:** Save the Children Sponsor & Pen-Pal (2006 – Present), Associazione Interculturale Universo (2019)

**Interests:** Yoga, extensive travel to over 20 countries across 3 continents, Disney history



Control No: E196724201

Issue Date: 05/31/2023

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Wolk, Michelle  
Student#: 43423310



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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### Fall 2021 (August 30, 2021 To December 17, 2021)

LAW	510	002	Civil Procedure	Richard Friedman	4.00	4.00	4.00	A-
LAW	530	001	Criminal Law	JJ Prescott	4.00	4.00	4.00	A
LAW	580	002	Torts	Sherman Clark	4.00	4.00	4.00	A-
LAW	593	008	Legal Practice Skills I	Kerry Kornblatt	2.00		2.00	H
LAW	598	008	Legal Pract:Writing & Analysis	Kerry Kornblatt	1.00		1.00	H

**Term Total** GPA: 3.800 15.00 12.00 15.00

**Cumulative Total** GPA: 3.800 12.00 15.00

### Winter 2022 (January 12, 2022 To May 05, 2022)

LAW	520	002	Contracts	Gabriel Rauterberg	4.00	4.00	4.00	A+
LAW	540	001	Introduction to Constitutional Law	Leah Litman	4.00	4.00	4.00	B+
LAW	594	008	Legal Practice Skills II	Kerry Kornblatt	2.00		2.00	H
LAW	737	001	Higher Education Law	Jack Bernard	4.00	4.00	4.00	A

**Term Total** GPA: 3.866 14.00 12.00 14.00

**Cumulative Total** GPA: 3.833 24.00 29.00

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Wolk, Michelle  
Student#: 43423310



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
<b>Fall 2022 (August 29, 2022 To December 16, 2022)</b>								
LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	A
LAW	781	001	FDA Law	Ralph Hall	3.00	3.00	3.00	A
LAW	803	001	Advocacy for Underdogs	Andrew Buchsbaum	2.00	2.00	2.00	A
LAW	828	001	Social Justice and the Law	Michelle Crockett	2.00	2.00	2.00	A
LAW	885	004	Mini-Seminar	Bridgette Carr	1.00		1.00	S
			Lawyering While Female	Chavi Nana				
LAW	992	492	Research: Special Projects	Tessa Bialek	3.00	3.00	3.00	A
			Civil Rights Litigation Clearinghouse					
<b>Term Total</b>				<b>GPA: 4.000</b>	<b>15.00</b>	<b>14.00</b>	<b>15.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.894</b>		<b>38.00</b>	<b>44.00</b>	
<b>Winter 2023 (January 11, 2023 To May 04, 2023)</b>								
LAW	404	001	SexualOrien/GenderID & the Law	Maureen Carroll	2.00	2.00	2.00	A
LAW	669	001	Evidence	Sherman Clark	3.00	3.00	3.00	A
LAW	807	001	Civil Rights Litigation	Nakisha Chaney	3.00	3.00	3.00	A+
LAW	990	005	Part-Time Externship	Amy Sankaran	3.00		3.00	S
LAW	991	801	Part-Time Externship Seminar	Amy Sankaran	1.00	1.00	1.00	A
LAW	992	492	Research: Special Projects	Tessa Bialek	3.00	3.00	3.00	A
			Civil Rights Litigation Clearinghouse					
<b>Term Total</b>				<b>GPA: 4.075</b>	<b>15.00</b>	<b>12.00</b>	<b>15.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.938</b>		<b>50.00</b>	<b>59.00</b>	

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Wolk, Michelle  
Student#: 43423310



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Hours	Load	Graded Hours	Towards Program	Credit Grade
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Fall 2023 (August 28, 2023 To December 15, 2023)

Elections as of: 05/31/2023

LAW	641	001	Crim Just: Invest&Police Prac	Ekow Yankah	4.00				
LAW	653	001	Employment Discrimination	Zachary Fasman	4.00				
LAW	685	001	Design Fulfilling Life in Law	Bridgette Carr	2.00				
LAW	901	001	Civil Rights Litig Initiative	Vivek Sankaran					
				Michael Steinberg	5.00				

End of Transcript  
Total Number of Pages 3

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## University of Michigan Law School Grading System

### Honor Points or Definitions

Through Winter Term 1993	Beginning Summer Term 1993
A+ 4.5	A+ 4.3
A 4.0	A 4.0
B+ 3.5	A- 3.7
B 3.0	B+ 3.3
C+ 2.5	B 3.0
C 2.0	B- 2.7
D+ 1.5	C+ 2.3
D 1.0	C 2.0
E 0	C- 1.7
	D+ 1.3
	D 1.0
	E 0

### Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.\*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.\* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- \* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

### Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

### Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records  
University of Michigan Law School  
625 South State Street  
Ann Arbor, Michigan 48109-1215  
(734) 763-6499

Harriet Fischer  
California Women's Law Center  
360 North Pacific Coast Highway, Suite 2070  
El Segundo, CA 90245  
323-951-1041 / harriet.fischer@cwlc.org

May 1, 2023

Dear Judge,

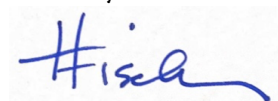
I am writing to enthusiastically recommend Michelle Wolk for a clerkship in your court.

Michelle is one of the best interns I have ever had the pleasure of supervising — she is bright, engaged, and a genuinely lovely person. In summer of 2022, Michelle was an intern at the California Women's Law Center, and I was constantly delighted by the quality of her work, her research and writing skills, her fluency with the issues at hand, and her flexibility of mind. Among other projects, Michelle drafted a white paper on telehealth in California, analyzing its status, its impact on women's health and reproductive access, and suggesting improvements to benefit women across the social spectrum. Her writing was clear and concise, her use of sources and citations impeccable, and she showed a thorough command of the issues along with a mature appreciation for her audience. Apart from the excellent paper she produced, I appreciated how eager she was for constructive input throughout the process and her receptivity to suggestions and comments from myself and others to improve her work. At the risk of sounding cliché, she is an absolute pleasure to work with.

Michelle seems to excel at everything she does, which is all the more remarkable considering the many things she is doing at any given time. She accepted assignments readily, volunteered to help whenever anyone was the least bit overburdened, and always went the extra mile because she is forward-thinking and anticipates the needs of the project and team as she works. While many students say they come to law school to make the world a better place, as a second-career attorney who was myself committed to public interest from the beginning, I am quite certain Michelle's passion for making a difference runs deep and is very, very real. In her quest to become the best attorney she can be, she has set her sights on a clerkship to further build her already-impressive skillset and add immeasurably to her experience and understanding of the legal landscape.

I am confident Michelle will be an asset to any judicial chambers. I recommend her without reservation and hope you have the opportunity to work with and mentor this delightful, impressive, and promising young woman. Please do not hesitate to contact me if you need any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Fischer", with a stylized flourish at the end.

Harriet Fischer  
Staff Attorney



University of Michigan  
Law SchoolLeah Litman  
Professor of Law

June 06, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I'm delighted to write this letter of recommendation for Michelle Wolk, who has applied for a clerkship in your chambers. Michelle is one of the two best research assistants I have ever had, and I think she is going to be a terrific law clerk. She's naturally gifted at legal analysis but also an extremely hard worker. She's supremely easy to work with – professional, organized, and upbeat. I really hope you give her application close consideration; I think you will really enjoy working with her.

I'll start with Michelle's work as a research assistant, since I've worked with her on several different projects and she has done superb work on all of them– and it's the kind of work she would be doing in chambers. (I also taught Michelle in the first-year constitutional law class, which I will describe more below.)

Because of her interest in reproductive rights and justice, Michelle asked me to let her know about any research assistant opportunities that might be related to that topic. And so, in winter 2022, I asked her to work with me on amicus briefs for the Michigan House and Senate Democrats in the pre-*Dobbs* challenge to Michigan's pre-*Roe* criminal abortion ban. The work was difficult and demanding—it happened on an extremely condensed timeline (which happened to be during the *Law Review* write-on competition); and it required her to look into state constitutional history.

Michelle put together a memo within a week, and basically all of it went directly into the brief. I was honestly a little taken aback at just how good her work product was – it's well written; it's comprehensive; it's organized and methodical; and it's just plain smart. She was able to draw specific connections between the drafting history of the Michigan Constitution and language in different U.S. Supreme Court opinions about the nature of unenumerated rights and the method for determining them.

Michelle's work was so good that I began asking her whether she had any interest and time whenever I had reproductive justice-related work that summer and fall. And there was a lot of it. In addition to the first amicus brief, Michelle assisted me on a second amicus brief in the early summer; congressional testimony over the summer; a white paper on the Michigan constitutional amendment related to reproductive rights and justice in the fall; and an amicus brief in the fall about the state Board of Canvassers' certification of the reproductive justice amendment. Most of those projects, like the first one, required extremely quick timelines—the first amicus brief was on a *week*-long briefing schedule; the final amicus brief had to be put together over a holiday weekend. And every single time, Michelle managed to find the time to put together absolutely first-rate work – and again, on every single dimension. She's a strong, clear writer; she's really good at research; and she's just really smart and good at law. (The projects involved a mix of federal and state law; legislative history and constitutional convention records research; and a ton of case law/doctrinal work.)

She's so good that, by the time of the amicus brief that had a turnaround time of a weekend, I basically told the people who asked me to do it that I wanted to check to see whether Michelle was available to help before I could commit to doing the brief!

As that description suggests, I think the absolute world of Michelle's legal research and writing skills, as well as her analytical capabilities. She is easily one of the two best research assistants I have ever had in almost a decade as an academic at a variety of institutions (including Harvard, Stanford, and University of California, Irvine).

On more qualitative dimensions, Michelle is equally impressive. She is *really* professional despite being on the younger end of the spectrum for law students at Michigan. Michelle graduated early from college and began a full-time job at the organization where she had been working part time throughout college. It's obvious to me that she can juggle a ton on her plate. It's also clear that she's really gifted at legal analysis, because it's not like she's pulling a GPA that lands her around the top ten students in the class or doing all of this research for me because she's only doing those things. She did all of the research work for me while also gaining election to the *Law Review* and having responsibilities (beginning the second semester of her first year) on the *Michigan Journal of Gender and Law*. She is involved in a ton of activities at the law school. And having worked with her on programming and activities related to her role in the Women Law Student's Association, Women Also Know Law, as well as other organizations, I can attest to the fact that she seems to do all of those things well too. I think she must work like a beast to get everything done; at a minimum, it's clear she has excellent time management skills and a monster work ethic.

Michelle is also obviously well-liked by her peers. She's been selected for leadership roles in both journals and student organizations. She effectively supervised the other research assistants that helped me with the white paper on the Michigan constitutional amendment.

Leah Litman - lmlitman@umich.edu - 734-647-0549

As I noted earlier in the letter, I got to know Michelle when she was a student in my first-year constitutional law class. Michelle's class participation and interim assignment were top notch. (In addition to a final exam, I give students an interim assignment. I also call on a large number of students each class, and therefore end up talking to every student about once per week.) Her performance on the exam, however, was not quite as good. But it does not even begin to speak to her potential as a clerk. For one thing, Michelle ended up needing surgery toward the end of the semester, and it's hard to think that didn't end up affecting her exam performance somewhat. But more importantly, I've seen example after example of how Michelle does the kind of work that happens in chambers – legal research and writing and analysis that's not limited to a 4-hour exam. And when it comes to that, she's really great at it. Nothing in her exam evinced even the slightest misstep or misunderstanding. She just ended up with a middling grade because she didn't write enough about all of the issues. Plus, her grade in that class (mine) has been the aberration – since then she's earned all As and A+s.

I think Michelle will be a terrific law clerk, and I would hire her in a second. I served as a law clerk for two years after graduating, once on the U.S. Court of Appeals for the Sixth Circuit and once on the U.S. Supreme Court, and I am completely confident that Michelle has what it takes to succeed as a law clerk.

I would be delighted to speak with you further about her application. You can reach me by email ([lmilitman@umich.edu](mailto:lmilitman@umich.edu)), or by phone (my work phone is 734-647-0549, and my cell phone, which is probably a better bet, is 202-374-3231).

Thank you for considering Michelle's application.

Sincerely,

Leah Litman

Leah Litman - [lmilitman@umich.edu](mailto:lmilitman@umich.edu) - 734-647-0549

**UNIVERSITY OF MICHIGAN LAW**  
**Legal Practice Program**  
801 Monroe Street, 945 Legal Research  
Ann Arbor, Michigan 48109-1210

Kerry Kornblatt  
Clinical Assistant Professor of Law

May 30, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Michelle Wolk's clerkship application. Michelle was a student in my year-long Legal Practice class, which is Michigan's 1L legal research and writing course. I know Michelle's legal writing well and I am in a good position to speak to that and her other substantial strengths.

Michelle is a standout student—she was one of the top few students in my 20-person class and received a “high pass” in my class. (The class is graded on a modified pass/fail system; I am permitted to give a “high pass” to the four top-scoring students.) Although Michelle's work was strong from the beginning, her dedication to building her skills was evident. In her major first-semester assignment (the research memo), she scored in the top few in the class. Second semester, her major writing assignment (the trial brief) tied for the highest score in the class.

Before writing this letter, I reviewed Michelle's writing to confirm my memory of it. Michelle is an impressive legal writer. She has truly standout research skills. (In the trial brief assignment, she was able to find some on-point cases that her peers had not.) Her analysis is impressively thorough, and the final product is polished and proofread to a degree that I very rarely see in my students' work. In short, she was displaying law-clerk-level writing by the end of her 1L year. Her focus on developing her research and writing skills has clearly not let up after her time in my class. I was not at all surprised to learn that her brief writing was singled out for an award in the law school's competitive in-house moot court competition.

In addition to her standout qualities as a legal writer, Michelle is the kind of person who would bring added value to a judicial chambers. One look at her resume reveals that she is someone who is at the core of a few different areas of our law school community. As I know from interacting with her in some of those roles, she's skilled at working with a wide range of people. She's organized. She's professional.

For these reasons, I'm confident that Michelle will make a great clerk and I'm happy to recommend her. If I may be of any further assistance, please feel free to contact me.

Sincerely,

/Kerry Kornblatt/

Kerry Kornblatt  
Clinical Assistant Professor of Law

Kerry Kornblatt - [kkorn@umich.edu](mailto:kkorn@umich.edu)

**MICHIGAN LAW**  
UNIVERSITY OF MICHIGAN  
625 South State Street  
Ann Arbor, Michigan 48109-1215

June 07, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Michelle Wolk for a clerkship in your chambers. Michelle was a student of mine in Legislation and Regulation and is also serving as the principal editor of an article I am publishing with the Michigan Law Review. Michelle is extremely bright and a hard worker. I believe she will be an excellent clerk.

I first got to know Michelle when she was a student in my Fall 2022 Legislation and Regulation class. Michelle was a quiet student, but she performed very well when called on to answer questions. I could tell that she always came well prepared, having thoroughly thought through the issues before coming to class. And she showed a deftness with the doctrine that few students possess. Students like Michelle make my job in the classroom a lot easier.

Michelle wrote the second-highest scoring exam in her Leg Reg class, and she was very close to having written the best. My Fall 2022 exam was hard (indeed, in retrospect, I think it was probably too hard). But Michelle's answers stood out for their consistency and for Michelle's ability to cut to the heart of the matter. Michelle did particularly well on the final question of the exam, which involved an EPA determination to withdraw its decision to regulate a certain chemical. It was a difficult statutory interpretation question that pitted agencies' inherent power to change their minds against various statutory clues suggesting that once the EPA determined to regulate a chemical it had to follow through with that decision by promulgating binding regulations, at least for the five-year period following the determination. Michelle's answer hit all the bases—she discussed various canons of interpretation, the role of Chevron, and explored the possible absurdity that would arise from requiring the EPA to regulate a chemical it no longer felt posed a health threat. It represented, like the rest of Michelle's exam, a masterful job.

After Michelle was my student in Leg Reg, I had the opportunity to publish with the Michigan Law Review, where Michelle serves as an articles editor, and I was delighted when Michelle was assigned to be the editor on my piece. Publishing with a journal at your home institution is a bit tricky, and I told the editors that we were partners in the endeavor and that they shouldn't shy away from giving me edits where they felt things could be improved. I've now received one round of edits from Michelle, and they were of consistently high quality. She improved the writing of the piece as well as pushed me to clarify and make crisper certain claims I make in the article. As a former clerk myself I know that editing is an important part of the job, and I think Michelle will be very capable in that role.

In preparation for writing this letter I took a look at Michelle's writing sample, which is a brief she wrote for our Campbell Moot Court Competition. I was heavily involved in advising the students putting together this year's Campbell question, and I know the issues well. Michelle's brief is, in my view, quite strong. It clearly lays out the law and her client's position. It fits the pieces together nicely (something that was particularly difficult to do on the Seventh Amendment question). Each paragraph begins with a forceful but not over-the-top sentence designed to guide the reader along to the conclusion. Michelle is a very nice writer.

Michelle has a strong academic track record at Michigan Law, where she has taken a mix of courses that include both bread-and-butter subjects and some that are targeted to her particular interests. And Michelle has achieved that record while being a genuine leader among her cohort, serving in many different types of roles on journals and in student organizations, acting as a tutor, and giving her time to pro bono projects. Michelle has a longstanding interest in using the law to make the world a better place, and she is devoted to a career in public interest. I know that given Michelle's skills she will continue to succeed in whatever she chooses to pursue.

In sum, I recommend Michelle highly. Please let me know if I can be of any additional help. My email address is deacond@umich.edu, and my cellphone is (646) 943-3566. My office line, which is in the footer, works as well. I appreciate you considering Michelle for a clerkship.

Sincerely,

Daniel Deacon

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**Writing Sample**

I prepared this brief for the quarter-final round of the 98th Henry M. Campbell Moot Court Competition. I was assigned to write the brief on behalf of the petitioner. This brief is self-edited, and has not been edited by anyone else.

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IN THE

Supreme Court of the United States

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No. 22-0096

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H. B. SUTHERLAND BANK, N.A.,  
*Petitioner,*

v.

CONSUMER FINANCIAL PROTECTION BUREAU,  
*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE TWELFTH CIRCUIT

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BRIEF FOR PETITIONER

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Michelle Wolk  
*Counsel of Record*

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## STATEMENT OF THE CASE

### A. Introduction

Petitioner H.B. Sutherland Bank, N.A. was denied its constitutionally mandated day in court. Instead, the Consumer Financial Protection Bureau played the role of judge, jury, and executioner, punishing Sutherland unilaterally. *H.B. Sutherland Bank, N.A. v. Consumer Fin. Prot. Bureau*, 505 F.4th 1, 2 (12th Cir. 2022). In so doing, the CFPB was acting pursuant to the Consumer Financial Protection Act of 2010. *Id.* at 4-5. In passing the CFPA, Congress infringed on the rights of those it is supposed to protect by creating a body that circumvents the constitutional safeguards designed to uphold due process and promote separation of powers. This encroachment cannot go unchecked.

First, Sutherland has a Seventh Amendment right to a jury trial because this case is analogous to the common-law claim of fraud and the relief sought here was legal, not equitable. The public rights exception does not mandate a different outcome, since this case is a matter of private rights, and even if it weren't, the exception does not apply to this case. Second, the dual-layer removal restrictions on the administrative law judge violate the separation-of-powers doctrine because they prevent the President from ensuring the laws are faithfully executed. In asking the Court to find otherwise, the CFPB deprives Sutherland of fair adjudication of its rights, deprives the American people of their constitutional right to serve on juries, deprives the President of his ability to take care that the laws are faithfully executed, and deprives the public of a democratically accountable figure for decisions pertaining to consumer protection.

### B. Statement of Facts

An established financial institution, Sutherland serves more than 11 million customers in the United States across 3,250 locations throughout the country. *Id.* at 3. Sutherland and its

subsidiaries provide retail banking, stock brokerage, insurance, and wealth management services to customers nationwide. *Id.* at 2-3. Sutherland is a registered national bank chartered and regulated by the Office of the Comptroller of the Currency. *Id.* at 3.

Created by Congress, the CFPB is an independent regulatory agency tasked with enforcing broad consumer protection provisions, including eighteen pre-existing statutes that regulate home finance, student loans, credit cards, and banking practices as well as a new prohibition on unfair, deceptive, or abusive acts and practices in the consumer-finance sector. *Id.* The CFPB was charged with “extensive” power to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, bring civil suits in federal court, and issue binding and enforceable decisions in administrative proceedings. *Id.* The Bureau has obtained billions in relief in the form of restitution, disgorgement, and civil penalties. *Id.* The Bureau is also authorized to provide injunctive relief. *Id.* The CFPB is led by a single Director, removable at the President’s will, and a singular ALJ presides over the Bureau’s adjudicative matters. *Id.* at 4. The ALJ is removable only for “good cause” by the Merit Systems Protection Board and MSPB members are removable by the President only for “inefficiency, neglect of duty, or malfeasance in office.” *Id.*

### C. Procedural History

In 2019, the CFPB initiated proceedings against Sutherland. *Id.* The merits of those proceedings are not on dispute. *Id.* After oral argument, the ALJ issued a Recommended Decision, consisting of both legal and factual findings. *Id.* The ALJ recommended that Sutherland be held liable for economic damages as well as a civil penalty in the amount of \$4,155,500. *Id.* at 4-5. Additionally, the ALJ recommended Sutherland be enjoined from offering a particular service to customers. *Id.* at 5. Sutherland appealed the decision to the Bureau’s Director, who subsequently upheld each of the ALJ’s findings, including the penalties. *Id.* At every stage of the appeal,

Sutherland raised the constitutional claims at issue here. *Id.* Sutherland filed a motion with the Director to stay her Final Order, which was denied. *Id.*

Sutherland filed a petition in the United States Court of Appeals for the Twelfth Circuit seeking to set aside the Director’s order. *Id.* at 5. A divided panel of the Twelfth Circuit affirmed the Director’s order. Sutherland petitioned the Court for a rehearing en banc, which was granted. Upon the rehearing, the Twelfth Circuit again found for the CFPB. Sutherland then filed a petition for writ of certiorari to the Supreme Court of the United States, which was granted.

## DISCUSSION

### I. PETITIONER IS ENTITLED TO A SEVENTH AMENDMENT TRIAL BY JURY

The right to a trial by jury “[i]n Suits at common law” is embedded in the United States Constitution as a cornerstone of our democracy. U.S. Const. amend. VII. For nearly two centuries, this Court has recognized that the trial by jury is “justly dear to the American people” and that “every encroachment upon it [should be] watched with great jealousy.” *Parsons v. Bedford*, 28 U.S. 433, 446 (1830). Even if jury trials “impede swift resolution of [the] proceedings and increase the expense,” such considerations are “insufficient to overcome the clear command of the Seventh Amendment.” *Granfinanciera v. Nordberg*, 492 U.S. 33, 63-64 (quoting *Curtis v. Loether*, 415 U.S. 189, 198 (1974)). Simply, efficiency does not supersede constitutional rights. Here, Sutherland’s rights were unjustly encroached. Sutherland was denied its day in court, and correspondingly, its trial by jury, in violation of the Seventh Amendment.

#### A. This Action is Sufficiently Analogous to a Suit at Common Law

The Seventh Amendment applies to any action analogous to suits brought in English law courts in 1791, and such an analogy is present here. *Parsons*, 28 U.S. at 447. Under the traditional test, courts determine whether a statutory action is analogous by examining the nature